

FEDERAL PRISON INDUSTRIES COMPETITION IN  
CONTRACTING ACT OF 2006

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JULY 21, 2006.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed  
—————

Mr. SENSENBRENNER, from the Committee on the Judiciary,  
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2965]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2965) to amend title 18, United States Code, to require Federal Prison Industries to compete for its contracts minimizing its unfair competition with private sector firms and their non-inmate workers and empowering Federal agencies to get the best value for taxpayers' dollars, to provide a five-year period during which Federal Prison Industries adjusts to obtaining inmate work opportunities through other than its mandatory source status, to enhance inmate access to remedial and vocational opportunities and other rehabilitative opportunities to better prepare inmates for a successful return to society, to authorize alternative inmate work opportunities in support of non-profit organizations and other public service programs, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Federal Prison Industries Competition in Contracting Act of 2006”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1 Short title; table of contents.  
Sec. 2 Governmentwide procurement policy relating to purchases from Federal Prison Industries.  
Sec. 3 Public participation regarding expansion proposals by Federal Prison Industries.  
Sec. 4 Transitional mandatory source authority.

- Sec. 5. Authority to perform as a Federal subcontractor.
- Sec. 6. Inmate wages and deductions.
- Sec. 7. Clarifying amendment relating to services.
- Sec. 8. Conforming amendment.
- Sec. 9. Rules of construction relating to chapter 307.
- Sec. 10. Providing additional rehabilitative opportunities for inmates.
- Sec. 11. Re-entry employment preparation through work-based training and apprenticeship.
- Sec. 12. Restructuring the Board of Directors.
- Sec. 13. Providing additional management flexibility to Federal Prison Industries operations.
- Sec. 14. Transitional personnel management authority.
- Sec. 15. Federal Prison Industries report to Congress.
- Sec. 16. Definitions.
- Sec. 17. Implementing regulations and procedures.
- Sec. 18. Rules of construction.
- Sec. 19. Effective date and applicability.
- Sec. 20. Clerical amendments.

**SEC. 2. GOVERNMENTWIDE PROCUREMENT POLICY RELATING TO PURCHASES FROM FEDERAL PRISON INDUSTRIES.**

Section 4124 of title 18, United States Code, is amended to read as follows:

**“§ 4124. Governmentwide procurement policy relating to purchases from Federal Prison Industries**

“(a) IN GENERAL.—Purchases from Federal Prison Industries, Incorporated, a wholly owned Government corporation, as referred to in section 9101(3)(E) of title 31, may be made by a Federal department or agency only in accordance with this section.

“(b) SOLICITATION AND EVALUATION OF OFFERS AND CONTRACT AWARDS.—(1)(A) If a procurement activity of a Federal department or agency has a requirement for a specific product or service that is authorized to be offered for sale by Federal Prison Industries, in accordance with section 4122 of this title, and is listed in the catalog referred to in subsection (g), the procurement activity shall solicit an offer from Federal Prison Industries, if the purchase is expected to be in excess of the micro-purchase threshold (as defined by section 32(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(f))).

“(B) The requirements of subparagraph (A) shall also apply to a procurement that a Federal department or agency intends to meet by placing an order against a contract maintained by the General Services Administration under the Multiple Award Schedule Contracts Program.

“(C) Federal Prison Industries, upon its request, shall be listed on any Schedule, referred to in subparagraph (B), as offering products or services which Federal Prison Industries believes to be comparable to those products and services being offered by commercial contractors through the Multiple Award Schedule Contracts Program.

“(2) A contract award for such product or service shall be made using competitive procedures in accordance with the applicable evaluation factors, unless a determination is made by the Attorney General pursuant to paragraph (3) or an award using other than competitive procedures is authorized pursuant to paragraph (7).

“(3) The procurement activity shall negotiate with Federal Prison Industries on a noncompetitive basis for the award of a contract if the Attorney General determines that—

“(A) Federal Prison Industries cannot reasonably expect fair consideration to receive the contract award on a competitive basis; and

“(B) the contract award is necessary to maintain work opportunities otherwise unavailable at the penal or correctional facility at which the contract is to be performed to prevent circumstances that could reasonably be expected to significantly endanger the safe and effective administration of such facility.

“(4) Except in the case of an award to be made pursuant to paragraph (3), a contract award shall be made with Federal Prison Industries only if the contracting officer for the procurement activity determines that—

“(A) the specific product or service to be furnished will meet the requirements of the procurement activity (including any applicable prequalification requirements and all specified commercial or governmental standards pertaining to quality, testing, safety, serviceability, and warranties);

“(B) timely performance of the contract can be reasonably expected; and

“(C) the contract price does not exceed a current market price.

“(5) A determination by the Attorney General pursuant to paragraph (3) shall be—

“(A) supported by specific findings by the warden of the penal or correctional institution at which a Federal Prison Industries workshop is scheduled to perform the contract;

“(B) supported by specific findings by Federal Prison Industries regarding why it does not expect to win the contract on a competitive basis; and

“(C) made and reported in the same manner as a determination made pursuant to section 303(c)(7) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(7)).

“(6) If the Attorney General has not made the determination described in paragraph (3) within 30 days after Federal Prison Industries has been informed of a contracting opportunity by a procurement activity, the procurement activity may proceed to conduct a procurement for the product or service in accordance with the procedures generally applicable to such procurements by the procurement activity.

“(7) A contract award may be made to Federal Prison Industries using other than competitive procedures if such product or service is only available from Federal Prison Industries and the contract may be awarded under the authority of section 2304(c)(1) of title 10 or section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(1)), as may be applicable, and pursuant to the justification and approval requirements relating to such noncompetitive procurements specified by law and the Governmentwide Federal Acquisition Regulation.

“(8) A contract award may be made to Federal Prison Industries using other than competitive procedures by the Federal Bureau of Prisons.

“(9) A solicitation for a contract shall first be made to Federal Prison Industries using other than competitive procedures if the product or service to be acquired would otherwise be furnished by a contractor performing the work outside of the United States.

“(c) OFFERS FROM FEDERAL PRISON INDUSTRIES.—(1) A timely offer received from Federal Prison Industries to furnish a product or service to a Federal department or agency shall be considered for award without limitation as to the dollar value of the proposed purchase, unless the contract opportunity has been reserved for competition exclusively among small business concerns pursuant to section 15(a) of the Small Business Act (15 U.S.C. 644(a)) and its implementing regulations.

“(2) Any offer made by Federal Prison Industries to furnish a product or service may exclude from the offer the price of the following:

“(A) The costs related to security of the facilities at which the contract will be performed.

“(B) The costs of educating and training the prison work force performing the contract.

“(C) Excess capital costs of machinery and excess inventories used within a prison environment that are the result of the unique environment of prison life.

“(D) Other costs of performing the contract resulting from the unique environment of prison facilities.

“(d) PERFORMANCE BY FEDERAL PRISON INDUSTRIES.—Federal Prison Industries shall perform its contractual obligations under a contract awarded by a Federal department or agency to the same extent as any other contractor.

“(e) FINALITY OF CONTRACTING OFFICER’S DECISION.—(1) A decision by a contracting officer regarding the award of a contract to Federal Prison Industries or relating to the performance of such contract shall be final, unless reversed on appeal pursuant to paragraph (2) or (3).

“(2)(A) The Chief Operating Officer of Federal Prison Industries may protest a decision by a contracting officer not to award a contract to Federal Prison Industries pursuant to subsection (b)(4), in accordance with section 33.103, (Protests to the agency) of the Federal Acquisition Regulation (48 C.F.R. part 33.103).

“(B) In the event of an adverse decision of a protest filed pursuant to subparagraph (A), the Assistant Attorney General for Administration may request a reconsideration of such adverse decision by the head of the Federal agency or department, which shall be considered de novo and the decision issued by such agency head on a non-delegable basis. Such decision upon reconsideration by the agency head shall be final.

“(3) A dispute between Federal Prison Industries and a procurement activity regarding performance of a contract shall be subject to—

“(A) alternative means of dispute resolution pursuant to subchapter IV of chapter 5 of title 5; or

“(B) final resolution by the board of contract appeals having jurisdiction over the procurement activity’s contract performance disputes pursuant to the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

“(f) REPORTING OF PURCHASES.—Each Federal department or agency shall report purchases from Federal Prison Industries to the Federal Procurement Data System (as referred to in section 6(d)(4) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(4))) in the same manner as it reports to such System any acquisition in an amount in excess of the simplified acquisition threshold (as defined by section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

“(g) CATALOG OF PRODUCTS.—Federal Prison Industries shall publish and maintain a catalog of all specific products and services that it is authorized to offer for

sale. Such catalog shall be periodically revised as products and services are added or deleted by its board of directors (in accordance with section 4122(b) of this title).  
“(h) COMPLIANCE WITH STANDARDS.—Federal Prison Industries shall be subject to Federal occupational, health, and safety standards with respect to the operation of its industrial operations.”

**SEC. 3. PUBLIC PARTICIPATION REGARDING EXPANSION PROPOSALS BY FEDERAL PRISON INDUSTRIES.**

Section 4122(b) of title 18, United States Code, is amended—

(1) by redesignating paragraph (6) as paragraph (13); and

(2) by striking paragraphs (4) and (5) and inserting the following new paragraphs:

“(4)(A) Federal Prison Industries is authorized to offer a new specific product or furnish a new specific service in response to a competitive solicitation or other purchase request issued by a Federal department or agency. No subsequent offering of such product or service may be made by Federal Prison Industries until the board of directors has approved the offering for sale of such new specific product or new specific service, in conformance with the requirements of paragraphs (5) through (9).

“(B) Federal Prison Industries may produce a product or furnish a service in excess of the authorized level of production for such product or service, in response to an order placed pursuant to an existing contract with a Federal department or agency, if the agency’s need for the product or service is of such an urgency that it would justify the use of procedures other than competitive procedures pursuant to section 2304(c)(2) of title 10 or section 303(c)(2) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(2)), as may be applicable.

“(5) A decision to authorize Federal Prison Industries to offer a new specific product or specific service or to expand the production of an existing product or service for sale to the Federal Government shall be made by its board of directors in conformance with the requirements of subsections (b), (c), (d), and (e) of section 553 of title 5, and this chapter.

“(6)(A) Whenever Federal Prison Industries proposes to offer for sale a new specific product or specific service or to expand production of a currently authorized product or service, the Chief Operating Officer of Federal Prison Industries shall submit an appropriate proposal to the board of directors and obtain the board’s approval before initiating any such expansion. The proposal submitted to the board shall include a detailed analysis of the probable impact of the proposed expansion of sales within the Federal market by Federal Prison Industries on private sector firms and their non-inmate workers.

“(B)(i) The analysis required by subparagraph (A) shall be performed by an interagency team on a reimbursable basis or by a private contractor paid by Federal Prison Industries.

“(ii) If the analysis is to be performed by an interagency team, such team shall be led by the Administrator of the Small Business Administration or the designee of such officer with representatives of the Department of Labor, the Department of Commerce, and the Federal Procurement Data Center.

“(iii) If the analysis is to be performed by a private contractor, the selection of the contractor and the administration of the contract shall be conducted by one of the entities referenced in clause (ii) as an independent executive agent for the board of directors. Maximum consideration shall be given to any proposed statement of work furnished by the Chief Operating Officer of Federal Prison Industries.

“(C) The analysis required by subparagraph (A) shall identify and consider—

“(i) the number of vendors that currently meet the requirements of the Federal Government for the specific product or specific service;

“(ii) the proportion of the Federal Government market for the specific product or specific service currently furnished by small businesses during the previous 3 fiscal years;

“(iii) the share of the Federal market for the specific product or specific service projected for Federal Prison Industries for the fiscal year in which production or performance will commence or expand and the subsequent 4 fiscal years;

“(iv) whether the industry producing the specific product or specific service in the private sector—

“(I) has an unemployment rate higher than the national average; or

“(II) has a rate of unemployment for workers that has consistently shown an increase during the previous 5 years;

“(v) whether the specific product is an import-sensitive product;

“(vi) the requirements of the Federal Government and the demands of entities other than the Federal Government for the specific product or service during the previous 3 fiscal years;

“(vii) the projected growth or decline in the demand of the Federal Government for the specific product or specific service;

“(viii) the capability of the projected demand of the Federal Government for the specific product or service to sustain both Federal Prison Industries and private vendors; and

“(ix) whether authorizing the production of the new product or performance of a new service will provide inmates with the maximum opportunity to acquire knowledge and skill in trades and occupations that will provide them with a means of earning a livelihood upon release.

“(D)(i) The board of directors may not approve a proposal to authorize the production and sale of a new specific product or continued sale of a previously authorized product unless—

“(I) the product to be furnished is a prison-made product; or

“(II) the service to be furnished is to be performed by inmate workers.

“(ii) The board of directors may not approve a proposal to authorize the production and sale of a new prison-made product or to expand production of a currently authorized product if the product is—

“(I) produced in the private sector by an industry which has reflected during the previous year an unemployment rate above the national average; or

“(II) an import-sensitive product.

“(iii) The board of directors may not approve a proposal for inmates to provide a service in which an inmate worker has access to—

“(I) personal or financial information about individual private citizens, including information relating to such person’s real property, however described, without giving prior notice to such persons or class of persons to the greatest extent practicable;

“(II) geographic data regarding the location of surface and subsurface infrastructure providing communications, water and electrical power distribution, pipelines for the distribution of natural gas, bulk petroleum products and other commodities, and other utilities; or

“(III) data that is classified.

“(iv)(I) Federal Prison Industries is prohibited from furnishing through inmate labor construction services, unless to be performed within a Federal correctional institution pursuant to the participation of an inmate in an apprenticeship or other vocational education program teaching the skills of the various building trades.

“(II) For purposes of this clause, the term ‘construction’ has the meaning given such term by section 2.101 of the Federal Acquisition Regulation (48 C.F.R. part 2.101), as in effect on June 1, 2004, including the repair, alteration, or maintenance of real property in being.

“(7) To provide further opportunities for participation by interested parties, the board of directors shall—

“(A) give additional notice of a proposal to authorize the production and sale of a new product or service, or expand the production of a currently authorized product or service, in a publication designed to most effectively provide notice to private vendors and labor unions representing private sector workers who could reasonably be expected to be affected by approval of the proposal, which notice shall offer to furnish copies of the analysis required by paragraph (6) and shall solicit comment on the analysis;

“(B) solicit comments on the analysis required by paragraph (6) from trade associations representing vendors and labor unions representing private sector workers who could reasonably be expected to be affected by approval of the proposal to authorize the production and sale of a new product or service (or expand the production of a currently authorized product or service); and

“(C) afford an opportunity, on request, for a representative of an established trade association, labor union, or other private sector representatives to present comments on the proposal directly to the board of directors.

“(8) The board of directors shall be provided copies of all comments received on the expansion proposal.

“(9) Based on the comments received on the initial expansion proposal, the Chief Operating Officer of Federal Prison Industries may provide the board of directors a revised expansion proposal. If such revised proposal provides for expansion of inmate work opportunities in an industry different from that initially proposed, such revised proposal shall reflect the analysis required by paragraph (6)(C) and be subject to the public comment requirements of paragraph (7).

“(10) The board of directors shall consider a proposal to authorize the sale of a new specific product or specific service (or to expand the volume of sales for a currently authorized product or service) and take any action with respect to such proposal, during a meeting that is open to the public, unless closed pursuant to section 552(b) of title 5.

“(11) In conformance with the requirements of paragraph (10) of this subsection, the board of directors may—

“(A) authorize the donation of products produced or services furnished by Federal industries and available for sale;

“(B) authorize the production of a new specific product or the furnishing of a new specific service for donation; or

“(C) authorize a proposal to expand production of a currently authorized specific product or specific service in an amount in excess of a reasonable share of the market for such product or service, if—

“(i) a Federal agency or department, purchasing such product or service, has requested that Federal Prison Industries be authorized to furnish such product or service in amounts that are needed by such agency or department; or

“(ii) the proposal is justified for other good cause and supported by at least two-thirds of the appointed members of the board.”.

**SEC. 4. TRANSITIONAL MANDATORY SOURCE AUTHORITY.**

(a) **IN GENERAL.**—Notwithstanding the requirements of section 4124 of title 18, United States Code (as amended by section 2 of this Act), a Federal department or agency having a requirement for a product that is authorized for sale by Federal Prison Industries and is listed in its catalog (referred to in section 4124(g) of title 18, United States Code) shall first solicit an offer from Federal Prison Industries and make purchases on a noncompetitive basis in accordance with this section or in accordance with section 2410n of title 10, United States Code, or section 318 of title III of the Federal Property and Administrative Services Act of 1949 (as added by subsection (i)).

(b) **PREFERENTIAL SOURCE STATUS.**—Subject to the limitations of subsection (d), a contract award shall be made on a noncompetitive basis to Federal Prison Industries if the contracting officer for the procurement activity determines that—

(1) the product offered by Federal Prison Industries will meet the requirements of the procurement activity (including commercial or governmental standards or specifications pertaining to design, performance, testing, safety, serviceability, and warranties as may be imposed upon a private sector supplier of the type being offered by Federal Prison Industries);

(2) timely performance of the contract by Federal Prison Industries can be reasonably expected; and

(3) the negotiated price does not exceed a fair and reasonable price.

(c) **CONTRACTUAL TERMS.**—The terms and conditions of the contract and the price to be paid to Federal Prison Industries shall be determined by negotiation between Federal Prison Industries and the Federal agency making the purchase. The negotiated price shall not exceed a fair and reasonable price determined in accordance with the procedures of the Federal Acquisition Regulation.

(d) **PERFORMANCE OF CONTRACTUAL OBLIGATIONS.**—

(1) **IN GENERAL.**—Federal Prison Industries shall perform the obligations of the contract negotiated pursuant to subsection (c).

(2) **PERFORMANCE DISPUTES.**—If the head of the contracting activity and the Chief Operating Officer of Federal Prison Industries are unable to resolve a contract performance dispute to their mutual satisfaction, such dispute shall be resolved pursuant to section 4124(e)(3) of title 18, United States Code (as added by section 2 of this Act).

(e) **LIMITATIONS ON USE OF AUTHORITY.**—

(1) **IN GENERAL.**—As a percentage of the sales made by Federal Prison Industries during the base period, the total dollar value of sales to the Government made pursuant to subsection (b) and subsection (c) of this section shall not exceed—

(A) 90 percent in fiscal year 2007;

(B) 85 percent in fiscal year 2008;

(C) 70 percent in fiscal year 2009;

(D) 55 percent in fiscal year 2010; and

(E) 40 percent in fiscal year 2011.

(2) **SALES WITHIN VARIOUS BUSINESS SECTORS.**—Use of the authority provided by subsections (b) and (c) shall not result in sales by Federal Prison Industries to the Government that are in excess of its total sales during the base year for each business sector.

(3) **LIMITATIONS RELATING TO SPECIFIC PRODUCTS.**—Use of the authorities provided by subsections (b) and (c) shall not result in contract awards to Federal Prison Industries that are in excess of its total sales during the base period for such product.

(4) **CHANGES IN DESIGN SPECIFICATIONS.**—If a buying agency directs a change to the design specification for a specific product, the costs associated with the implementation of such specification change by Federal Prison Industries shall

not be considered for the purposes of computing sales by Federal Prison Industries for the purposes of paragraphs (2) and (3).

(f) **ADDITIONAL AUTHORITY TO SUSTAIN INMATE EMPLOYMENT.**—During the period specified in subsection (g), the authority of section 4122(b)(11)(C)(ii) of title 18, United States Code (as added by section 3), may be used by the Board to sustain inmate employment.

(g) **DURATION OF AUTHORITY.**—The preferential contracting authorities authorized by subsection (b) may not be used on or after October 1, 2011, and become effective on the effective date of the final regulations issued pursuant to section 17.

(h) **DEFINITIONS.**—For the purposes of this section—

(1) the term “base period” means the total sales of Federal Prison Industries during the period October 1, 2003, and September 30, 2004 (Fiscal Year 2004);

(2) the term “business sectors” means the seven product/service business groups identified in the 2004 Federal Prison Industries annual report as the Clothing and Textiles Business Group, the Electronics Business Group, the Fleet Management and Vehicular Components Business Group, the Industrial Products Business Group, the Office Furniture Business Group, the Recycling Activities Business Group, and the Services Business Group; and

(3) the term “fair and reasonable price” shall be given the same meaning as, and be determined pursuant to, part 15.8 of the Federal Acquisition Regulation (48 C.F.R. 15.8).

(i) **FINDING BY ATTORNEY GENERAL WITH RESPECT TO PUBLIC SAFETY.**—(1) Not later than 60 days prior to the end of each fiscal year specified in subsection (e)(1), the Attorney General shall make a finding regarding the effects of the percentage limitation imposed by such subsection for such fiscal year and the likely effects of the limitation imposed by such subsection for the following fiscal year.

(2) The Attorney General’s finding shall include a determination whether such limitation has resulted or is likely to result in a substantial reduction in inmate industrial employment and whether such reductions, if any, present a significant risk of adverse effects on safe prison operation or public safety.

(3) If the Attorney General finds a significant risk of adverse effects on either safe prison management or public safety, he shall so advise the Congress.

(4) In advising the Congress pursuant to paragraph (3), the Attorney General shall make recommendations for additional authorizations of appropriations to provide additional alternative inmate rehabilitative opportunities and additional correctional staffing, as may be appropriate.

(j) **PROCEDURAL REQUIREMENTS FOR CIVILIAN AGENCIES RELATING TO PRODUCTS OF FEDERAL PRISON INDUSTRIES.**—Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended by adding at the end the following new section:

**“SEC. 318. PRODUCTS OF FEDERAL PRISON INDUSTRIES: PROCEDURAL REQUIREMENTS.**

“(a) **MARKET RESEARCH.**—Before purchasing a product listed in the latest edition of the Federal Prison Industries catalog under section 4124(g) of title 18, United States Code, the head of an executive agency shall conduct market research to determine whether the Federal Prison Industries product is comparable to products available from the private sector that best meet the executive agency’s needs in terms of price, quality, and time of delivery.

“(b) **COMPETITION REQUIREMENT.**—If the head of the executive agency determines that a Federal Prison Industries product is not comparable in price, quality, or time of delivery to products available from the private sector that best meet the executive agency’s needs in terms of price, quality, and time of delivery, the agency head shall use competitive procedures for the procurement of the product or shall make an individual purchase under a multiple award contract. In conducting such a competition or making such a purchase, the agency head shall consider a timely offer from Federal Prison Industries.

“(c) **IMPLEMENTATION BY HEAD OF EXECUTIVE AGENCY.**—The head of an executive agency shall ensure that—

“(1) the executive agency does not purchase a Federal Prison Industries product or service unless a contracting officer of the agency determines that the product or service is comparable to products or services available from the private sector that best meet the agency’s needs in terms of price, quality, and time of delivery; and

“(2) Federal Prison Industries performs its contractual obligations to the same extent as any other contractor for the executive agency.

“(d) **MARKET RESEARCH DETERMINATION NOT SUBJECT TO REVIEW.**—A determination by a contracting officer regarding whether a product or service offered by Federal Prison Industries is comparable to products or services available from the private sector that best meet an executive agency’s needs in terms of price, quality,

and time of delivery shall not be subject to review pursuant to section 4124(b) of title 18.

“(e) PERFORMANCE AS A SUBCONTRACTOR.—(1) A contractor or potential contractor of an executive agency may not be required to use Federal Prison Industries as a subcontractor or supplier of products or provider of services for the performance of a contract of the executive agency by any means, including means such as—

“(A) a contract solicitation provision requiring a contractor to offer to make use of products or services of Federal Prison Industries in the performance of the contract;

“(B) a contract specification requiring the contractor to use specific products or services (or classes of products or services) offered by Federal Prison Industries in the performance of the contract; or

“(C) any contract modification directing the use of products or services of Federal Prison Industries in the performance of the contract.

“(2) In this subsection, the term ‘contractor’, with respect to a contract, includes a subcontractor at any tier under the contract.

“(f) PROTECTION OF CLASSIFIED AND SENSITIVE INFORMATION.—The head of an executive agency may not enter into any contract with Federal Prison Industries under which an inmate worker would have access to—

“(1) any data that is classified;

“(2) any geographic data regarding the location of—

“(A) surface and subsurface infrastructure providing communications or water or electrical power distribution;

“(B) pipelines for the distribution of natural gas, bulk petroleum products, or other commodities; or

“(C) other utilities; or

“(3) any personal or financial information about any individual private citizen, including information relating to such person’s real property however described, without the prior consent of the individual.

“(g) DEFINITIONS.—In this section:

“(1) The term ‘competitive procedures’ has the meaning given such term in section 4(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(5)).

“(2) The term ‘market research’ means obtaining specific information about the price, quality, and time of delivery of products available in the private sector through a variety of means, which may include—

“(A) contacting knowledgeable individuals in government and industry;

“(B) interactive communication among industry, acquisition personnel, and customers; and

“(C) interchange meetings or pre-solicitation conferences with potential offerors.”

#### SEC. 5. AUTHORITY TO PERFORM AS A FEDERAL SUBCONTRACTOR.

(a) IN GENERAL.—Federal Prison Industries is authorized to enter into a contract with a Federal contractor (or a subcontractor of such contractor at any tier) to produce products as a subcontractor or supplier in the performance of a Federal procurement contract. The use of Federal Prison Industries as a subcontractor or supplier shall be a wholly voluntary business decision by the Federal prime contractor or subcontractor, subject to any prior approval of subcontractors or suppliers by the contracting officer which may be imposed by the Federal Acquisition Regulation or by the contract.

(b) LIMITATIONS ON USE.—Federal Prison Industries is prohibited from being a subcontractor or supplier at any tier if—

(1) the product or service is to be acquired by a Federal department or agency pursuant to section 3 of the Javits-Wagner-O’Day Act (41 U.S.C. 48); or

(2) the product to be acquired by the Federal department or agency is subject to section 2533a of title 10, United States Code.

(c) COMMERCIAL SALES PROHIBITED.—The authority provided by subsection (a) shall not result, either directly or indirectly, in the sale in the commercial market of a product or service resulting from the labor of Federal inmate workers in violation of section 1761(a) of title 18, United States Code. A Federal contractor (or subcontractor at any tier) using Federal Prison Industries as a subcontractor or supplier in furnishing a commercial product pursuant to a Federal contract shall implement appropriate management procedures to prevent introducing an inmate-produced product into the commercial market.

(d) PROHIBITIONS ON MANDATING SUBCONTRACTING WITH FEDERAL PRISON INDUSTRIES.—Except as authorized under the Federal Acquisition Regulation, the use of Federal Prison Industries as a subcontractor or supplier of products or provider of services shall not be imposed upon prospective or actual Federal prime contractors or a subcontractors at any tier by means of—

- (1) a contract solicitation provision requiring a contractor to offer to make use of Federal Prison Industries, its products or services;
- (2) specifications requiring the contractor to use specific products or services (or classes of products or services) offered by Federal Prison Industries in the performance of the contract;
- (3) any contract modification directing the use of Federal Prison Industries, its products or services; or
- (4) any other means.

**SEC. 6. INMATE WAGES AND DEDUCTIONS.**

Section 4122(b) of title 18, United States Code (as amended by section 3 of this Act), is further amended by adding after paragraph (11) a new paragraph (12) as follows:

“(12)(A) The Board of Directors of Federal Prison Industries shall prescribe the rates of hourly wages to be paid inmates performing work for or through Federal Prison Industries. The Director of the Federal Bureau of Prisons shall prescribe the rates of hourly wages for other work assignments within the various Federal correctional institutions. In the case of an inmate whose term of imprisonment is to expire in not more than 2 years, wages shall be earned at an hourly rate of not less than \$2.50, but paid at the same rate and in the same manner as to any other inmate, and any amount earned but not paid shall be held in trust and paid only upon the actual expiration of the term of imprisonment.

“(B) The various inmate wage rates shall be reviewed and considered for increase on not less than a biannual basis.

“(C) The Board of Directors of Federal Prison Industries shall—

“(i) not later than September 30, 2008, increase the maximum wage rate for inmates performing work for or through Federal Prison Industries to an amount equal to 50 percent of the minimum wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)); and

“(ii) not later than September 30, 2013, increase such maximum wage rate to an amount equal to such minimum wage.

“(D) Wages earned by an inmate worker shall be paid in the name of the inmate. Deductions, aggregating to not more than 80 percent of gross wages, shall be taken from the wages due for—

“(i) applicable taxes (Federal, State, and local);

“(ii) payment of fines and restitution pursuant to court order;

“(iii) payment of additional restitution for victims of the inmate’s crimes (at a rate not less than 10 percent of gross wages);

“(iv) allocations for support of the inmate’s family pursuant to statute, court order, or agreement with the inmate;

“(v) allocations to a fund in the inmate’s name to facilitate such inmate’s assimilation back into society, payable at the conclusion of incarceration; and

“(vi) such other deductions as may be specified by the Director of the Bureau of Prisons.

“(E) Each inmate worker working for Federal Prison Industries shall indicate in writing that such person—

“(i) is participating voluntarily; and

“(ii) understands and agrees to the wages to be paid and deductions to be taken from such wages.”.

**SEC. 7. CLARIFYING AMENDMENT RELATING TO SERVICES.**

(a) IN GENERAL.—Section 1761 of title 18, United States Code, is amended in subsection (a) and (c) by striking “goods, wares, or merchandise manufactured, produced, or mined” each place it appears and inserting “products manufactured, services furnished, or minerals mined”.

(b) COMPLETION OF EXISTING AGREEMENTS.—Any prisoner work program operated by a prison or jail of a State or local jurisdiction of a State which is providing services for the commercial market through inmate labor on October 1, 2004, may continue to provide such commercial services until—

(1) the expiration date specified in the contract or other agreement with a commercial partner on October 1, 2004, or

(2) until September 30, 2010, if the prison work program is directly furnishing the services to the commercial market.

(c) APPROVAL REQUIRED FOR LONG-TERM OPERATION.—A prison work program operated by a correctional institution operated by a State or local jurisdiction of a State may continue to provide inmate labor to furnish services for sale in the commercial market after the dates specified in subsection (b) if such program has been certified pursuant to section 1761(c)(1) of title 18, United States Code, and is in compliance with the requirements of such subsection and its implementing regulations.

(d) EXISTING WORK OPPORTUNITIES FOR FEDERAL INMATES.—Any private for-profit business entity having an agreement with Federal Prison Industries in effect on the date of enactment of this Act, under which Federal inmates are furnishing services that are being introduced into the commercial market, may continue to furnish such services for the duration of the term of such agreement.

(e) ADDITIONAL AMENDMENT.—Section 1761 of title 18, United States Code, is further amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection:

“(d) This section shall not apply to services performed as part of an inmate work program conducted by a State or local government to disassemble, scrap, and recycle products, other than electronic products, that would otherwise be disposed of in a landfill. Recovered scrap from such program may be sold.”.

**SEC. 8. CONFORMING AMENDMENT.**

Section 4122(a) of title 18, United States Code, is amended by striking “production of commodities” and inserting “production of products or furnishing of services”.

**SEC. 9. RULES OF CONSTRUCTION RELATING TO CHAPTER 307.**

Chapter 307 of title 18, United States Code, is further amended by adding at the end the following:

**“§ 4130. Construction of provisions**

“Nothing in this chapter shall be construed—

“(1) to establish an entitlement of any inmate to—

“(A) employment in a Federal Prison Industries facility; or

“(B) any particular wage, compensation, or benefit on demand, except as otherwise specifically provided by law or regulation;

“(2) to establish that inmates are employees for the purposes of any law or program; or

“(3) to establish any cause of action by or on behalf of any inmate against the United States or any officer, employee, or contractor thereof.”.

**SEC. 10. PROVIDING ADDITIONAL REHABILITATIVE OPPORTUNITIES FOR INMATES.**

(a) ADDITIONAL EDUCATIONAL, TRAINING, AND RELEASE-PREPARATION OPPORTUNITIES.—

(1) PROGRAM ESTABLISHED.—There is hereby established the Enhanced In-Prison Educational and Vocational Assessment and Training Program within the Federal Bureau of Prisons.

(2) COMPREHENSIVE PROGRAM.—In addition to such other components as the Director of the Bureau of Prisons deems appropriate to reduce inmate idleness and better prepare inmates for a successful reentry into the community upon release, the program shall provide—

(A) in-prison assessments of inmates’ needs and aptitudes;

(B) a full range of educational opportunities;

(C) vocational training and apprenticeships; and

(D) comprehensive release-readiness preparation.

(3) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of carrying out the program established by paragraph (1), \$75,000,000 is authorized for each fiscal year after fiscal year 2008, to remain available until expended. It is the sense of Congress that Federal Prison Industries should use some of its net earnings to accomplish the purposes of the program.

(4) SCHEDULE FOR IMPLEMENTATION.—All components of the program shall be established—

(A) in at least 25 percent of all Federal prisons not later than 2 years after the date of the enactment of this Act;

(B) in at least 50 percent of all Federal prisons not later than 4 years after such date of enactment;

(C) in at least 75 percent of all Federal prisons not later than 6 years after such date of enactment; and

(D) in all Federal prisons not later than 8 years after such date of enactment.

(b) ADDITIONAL INMATE WORK OPPORTUNITIES THROUGH PUBLIC SERVICE ACTIVITIES.—

(1) IN GENERAL.—Chapter 307 of title 18, United States Code, is further amended by inserting after section 4124 the following new section:

**“§ 4124a. Additional inmate work opportunities through public service activities**

“(a) IN GENERAL.—Inmates with work assignments within Federal Prison Industries may perform work for an eligible entity pursuant to an agreement between

such entity and the Inmate Work Training Administrator in accordance with the requirements of this section.

“(b) DEFINITION OF ELIGIBLE ENTITIES.—For the purposes of this section, the term ‘eligible entity’ means an entity—

“(1) that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code and that has been such an organization for a period of not less than 36 months prior to inclusion in an agreement under this section;

“(2) that is a religious organization described in section 501(d) of such Code and exempt from taxation under section 501(a) of such Code; or

“(3) that is a unit of local government, a school district, or another special purpose district.

“(c) INMATE WORK TRAINING ADMINISTRATOR.—There is hereby established the position of Inmate Work Training Administrator, who shall be responsible for fostering the creation of alternative inmate work opportunities authorized by this section. The Administrator shall be designated by the Chief Executive Officer of Federal Prison Industries, with the approval of the Board of Directors, and be under the supervision of the Chief Operating Officer, but may directly report to the Board.

“(d) PROPOSED AGREEMENTS.—An eligible entity seeking to enter into an agreement pursuant to subsection (a) shall submit a detailed proposal to the Inmate Work Training Administrator. Each such agreement shall specify—

“(1) types of work to be performed;

“(2) the proposed duration of the agreement, specified in terms of a base year and number of option years;

“(3) the number of inmate workers expected to be employed in the specified types of work during the various phases of the agreement;

“(4) the wage rates proposed to be paid to various classes of inmate workers; and

“(5) the facilities, services and personnel (other than correctional personnel dedicated to the security of the inmate workers) to be furnished by Federal Prison Industries or the Bureau of Prisons and the rates of reimbursement, if any, for such facilities, services, and personnel.

“(e) REPRESENTATIONS.—

“(1) ELEEMOSYNARY WORK ACTIVITIES.—Each proposed agreement shall be accompanied by a written certification by the chief executive officer of the eligible entity that—

“(A) the work to be performed by the inmate workers will be limited to the eleemosynary work of such entity in the case of an entity described in paragraph (1) or (2) of subsection (b);

“(B) the work would not be performed in the United States but for the availability of the inmate workers; and

“(C) the work performed by the inmate workers will not result, either directly or indirectly, in the production of a new product or the furnishing of a service that is to be offered for other than resale or donation by the eligible entity or any affiliate of the such entity.

“(2) PROTECTIONS FOR NON-INMATE WORKERS.—Each proposed agreement shall also be accompanied by a written certification by the chief executive officer of the eligible entity that—

“(A) no non-inmate employee (including any person performing work activities for such governmental entity pursuant to section 607 of subchapter IV of the Social Security Act (42 U.S.C. 607)) of the eligible entity (or any affiliate of the entity) working in the United States will have his or her job abolished or work hours reduced as a result of the entity being authorized to utilize inmate workers; and

“(B) the work to be performed by the inmate workers will not supplant work currently being performed in the United States by a contractor of the eligible entity.

“(f) APPROVAL BY BOARD OF DIRECTORS.—

“(1) IN GENERAL.—Each such proposed agreement shall be presented to the Board of Directors, be subject to the same opportunities for public comment, and be publicly considered and acted upon by the Board in a manner comparable to that required by paragraphs (7) and (8) of section 4122(b).

“(2) MATTERS TO BE CONSIDERED.—In determining whether to approve a proposed agreement, the Board shall—

“(A) give priority to an agreement that provides inmate work opportunities that will provide participating inmates with the best prospects of obtaining employment paying a livable wage upon release;

“(B) give priority to an agreement that provides for maximum reimbursement for inmate wages and for the costs of supplies and equipment needed to perform the types of work to be performed;

“(C) not approve an agreement that will result in the displacement of non-inmate workers contrary to the representations required by subsection (e)(2) as determined by the Board or by the Secretary of Labor (pursuant to subsection (i)); and

“(D) not approve an agreement that will result, either directly or indirectly, in the production of a new product or the furnishing of a service for other than resale by an eligible entity described in paragraph (1) or (2) of subsection (b) or donation.

“(g) WAGE RATES AND DEDUCTIONS FROM INMATE WAGES.—

“(1) IN GENERAL.—Inmate workers shall be paid wages for work under the agreement at a basic hourly rate to be negotiated between the eligible entity and Federal Prison Industries and specified in the agreement. The wage rates set by the Director of the Federal Bureau of Prisons to be paid inmates for various institutional work assignments are specifically authorized.

“(2) PAYMENT TO INMATE WORKER AND AUTHORIZED DEDUCTIONS.—Wages shall be paid and deductions taken pursuant to section 4122(b)(12)(D).

“(3) VOLUNTARY PARTICIPATION BY INMATE.—Each inmate worker to be utilized by an eligible entity shall indicate in writing that such person—

“(A) is participating voluntarily; and

“(B) understands and agrees to the wages to be paid and deductions to be taken from such wages.

“(h) ASSIGNMENT TO WORK OPPORTUNITIES.—Assignment of inmates to work under an approved agreement with an eligible entity shall be subject to the Bureau of Prisons Program Statement Number 1040.10 (Non-Discrimination Toward Inmates), as contained in section 551.90 of title 28 of the Code of Federal Regulations (or any successor document).

“(i) ENFORCEMENT OF PROTECTIONS FOR NON-INMATE WORKERS.—

“(1) PRIOR TO BOARD CONSIDERATION.—Upon request of any interested person, the Secretary of Labor may promptly verify a certification made pursuant to subsection (e)(2) with respect to the displacement of non-inmate workers so as to make the results of such inquiry available to the Board of Directors prior to the Board’s consideration of the proposed agreement. The Secretary and the person requesting the inquiry may make recommendations to the Board regarding modifications to the proposed agreement.

“(2) DURING PERFORMANCE.—

“(A) IN GENERAL.—Whenever the Secretary deems appropriate, upon request or otherwise, the Secretary may verify whether the actual performance of the agreement is resulting in the displacement of non-inmate workers or the use of inmate workers in a work activity not authorized under the approved agreement.

“(B) SANCTIONS.—Whenever the Secretary determines that performance of the agreement has resulted in the displacement of non-inmate workers or employment of an inmate worker in an unauthorized work activity, the Secretary may—

“(i) direct the Inmate Work Training Administrator to terminate the agreement for default, subject to the processes and appeals available to a Federal contractor whose procurement contract has been terminated for default; and

“(ii) initiate proceedings to impose upon the person furnishing the certification regarding non-displacement of non-inmate workers required by subsection (d)(2)(B) any administrative, civil, and criminal sanctions as may be available.”.

(2) AUTHORIZATION OF APPROPRIATION.—There is authorized to be appropriated \$5,000,000 for each of the fiscal years 2008 through 2012 for the purposes of paying the wages of inmates and otherwise undertaking the maximum number of agreements with eligible entities pursuant to section 4124a of title 18, United States Code, as added by paragraph (1).

(3) SENSE OF CONGRESS.—For purposes of sections 4124a and 4124b of title 18, United States Code, as added by sections 10(b) and 11, respectively, it is the sense of Congress that an inmate training wage that is at least 50 percent of the minimum wage prescribed pursuant to section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) will facilitate successful achievement of the goals of the work-based training and apprenticeship program authorized under such section 4124a.

(c) INMATE WORK OPPORTUNITIES IN SUPPORT OF NOT-FOR-PROFIT ENTITIES.—

- (1) PROPOSALS FOR DONATION PROGRAMS.—The Chief Operating Officer of Federal Prison Industries shall develop and present to the Board of Directors of Federal Prison Industries proposals to have Federal Prison Industries donate products and services to eligible entities that provide goods or services to low-income individuals who would likely otherwise have difficulty purchasing such products or services in the commercial market.
- (2) SCHEDULE FOR SUBMISSION AND CONSIDERATION OF DONATION PROGRAMS.—
- (A) INITIAL PROPOSALS.—The Chief Operating Officer shall submit the initial group of proposals for programs of the type described in paragraph (1) within 180 days after the date of the enactment of this Act. The Board of Directors of Federal Prison Industries shall consider such proposals from the Chief Operating Officer not later than the date that is 270 days after the date of the enactment of this Act.
- (B) ANNUAL OPERATING PLAN.—The Board of Directors of Federal Prison Industries shall consider proposals by the Chief Operating Officer for programs of the type described in paragraph (1) as part of the annual operating plan for Federal Prison Industries.
- (C) OTHER PROPOSALS.—In addition to proposals submitted by the Chief Operating Officer, the Board of Directors may, from time to time, consider proposals presented by prospective eligible entities.
- (3) DEFINITION OF ELIGIBLE ENTITIES.—For the purposes of this subsection, the term “eligible entity” means an entity—
- (A) that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code and that has been such an organization for a period of not less than 36 months prior to inclusion in a proposal of the type described in paragraph (1), or
- (B) that is a religious organization described in section 501(d) of such Code and exempt from taxation under section 501(a) of such Code.
- (4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$7,000,000 for each of the fiscal years 2008 through 2012 for the purposes of paying the wages of inmates and otherwise carrying out programs of the type described in paragraph (1).
- (d) MAXIMIZING INMATE REHABILITATIVE OPPORTUNITIES THROUGH COGNITIVE ABILITIES ASSESSMENTS.—
- (1) DEMONSTRATION PROGRAM AUTHORIZED.—
- (A) IN GENERAL.—There is hereby established within the Federal Bureau of Prisons a program to be known as the “Cognitive Abilities Assessment Demonstration Program”. The purpose of the demonstration program is to determine the effectiveness of a program that assesses the cognitive abilities and perceptual skills of Federal inmates to maximize the benefits of various rehabilitative opportunities designed to prepare each inmate for a successful return to society and reduce recidivism. The demonstration program shall be undertaken by a contractor with a demonstrated record of enabling the behavioral and academic improvement of adults through the use of research-based systems that maximize the development of both the cognitive and perceptual capabilities of a participating individual, including adults in a correctional setting.
- (B) SCOPE OF DEMONSTRATION PROGRAM.—The demonstration program shall to the maximum extent practicable, be—
- (i) conducted during a period of three consecutive fiscal years, commencing during fiscal year 2008;
- (ii) conducted at 12 Federal correctional institutions; and
- (iii) offered to 6,000 inmates, who are categorized as minimum security or less, and are within five years of release.
- (C) REPORT ON RESULTS OF PROGRAM.—Not later than 60 days after completion of the demonstration program, the Director shall submit to Congress a report on the results of the program. At a minimum, the report shall include an analysis of employment stability, stability of residence, and rates of recidivism among inmates who participated in the program after 18 months of release.
- (2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated \$3,000,000 in each of the three fiscal years after fiscal year 2007, to remain available until expended, for the purposes of conducting the demonstration program authorized by subsection (a).
- (e) PRERELEASE EMPLOYMENT ASSISTANCE.—
- (1) IN GENERAL.—The Director of the Federal Bureau of Prisons shall, to the maximum extent practicable, afford to inmates opportunities to participate in

programs and activities designed to help prepare such inmates to obtain employment upon release.

(2) PRERELEASE EMPLOYMENT PLACEMENT ASSISTANCE.—Such prerelease employment placement assistance required by subsection (a) shall include—

- (A) training in the preparation of resumes and job applications;
- (B) training in interviewing skills;
- (C) training and assistance in job search techniques;
- (D) conduct of job fairs; and
- (E) such other methods deemed appropriate by the Director.

(3) PRIORITY PARTICIPATION.—Priority in program participation shall be accorded to inmates who are participating in work opportunities afforded by Federal Prison Industries and are within 24 months of release from incarceration.

**SEC. 11. RE-ENTRY EMPLOYMENT PREPARATION THROUGH WORK-BASED TRAINING AND APPRENTICESHIP.**

(a) IN GENERAL.—Chapter 307 of title 18, United States Code, is further amended by inserting after section 4124a, as added by section 10(b), the following new section:

**“§ 4124b. Re-entry employment preparation through work-based training and apprenticeship.**

“(a) PARTICIPATION AUTHORIZED.—A private for-profit business entity shall be an eligible entity for participation in the program authorized by section 4124a of this title, if such participation conforms with the requirements and limitations of this section.

“(b) REQUIREMENTS RELATING TO PRODUCTS AND SERVICES.—A private for-profit business entity is eligible for such participation if such business entity proposes to train participating inmates, pursuant to subsection (c), by producing a product or performing a service, if such product or service is of a type for which there is no production or performance within the United States by noninmate workers.

“(c) REQUIREMENTS RELATING TO TRAINING.—

“(1) IN GENERAL.—For purposes of this section, the training of participating inmates shall be work-based training that provides to a participating inmate apprenticeship training or a functionally equivalent structured program that combines hands-on work experience with conceptual understanding of the work being performed. Other inmates with regular work assignments within Federal Prison Industries may be assigned to support the program.

“(2) DOCUMENTATION OF PROGRAM PARTICIPATION.—

“(A) Each inmate who successfully completes participation in training undertaken pursuant to this section shall be provided a certificate or other written document memorializing such successful completion, providing a marketable summary of the skills learned and an overall assessment of performance.

“(B) Copies of such documents shall be furnished to perspective employers upon the request of the participant for a period of not less than 24 months from the date of such participant’s release from incarceration.

“(3) DOCUMENTS REQUIRED FOR EMPLOYMENT.—The Federal Bureau of Prisons, in cooperation with a business entity providing an inmate work-based training at the time of his or her scheduled release, shall make every reasonable effort to help the inmate timely obtain such documentation (including a State government-issued photo identification card) as a person may be required to provide to a prospective employer, after such person completes an Employment Eligibility Verification (ICE Form I-9).

“(d) WAGE RATES.—

“(1) IN GENERAL.—Business entities participating in the program authorized by subsection (a) shall propose wages for inmates participating in the program at rates not less than the inmate training wage promulgated pursuant to section 17(c) of the Federal Prison Industries Competition in Contracting Act of 2006.

“(2) INMATE TRAINING WAGE.—Not more than 30 days after the date of enactment of this section, the Board of Directors of Federal Prison Industries shall request the Secretary of Labor to promulgate an inmate training wage pursuant to section 14(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(a)).

“(e) SUPPORT FOR OTHER RELEASE PREPARATION PROGRAMS.—In addition to the matters listed in section 4124a(d) of this title, a proposal for an agreement referred to in such section submitted by an eligible business entity shall specify an amount of any supplemental funding, specified as a per-capita amount for each inmate participating pursuant to the agreement, that the business entity will provide for the purpose of supporting remedial, vocational, and other release preparation programs for other nonparticipating inmates.

“(f) ADDITIONAL STANDARDS APPLICABLE.—In considering a proposed agreement pursuant to section 4124a(f)(1) of this title, the Board of Directors shall—

“(1) give preference to an agreement that proposes—

“(A) work-based training opportunities that provide the participating inmate the best prospects for obtaining employment paying a livable wage upon release;

“(B) the highest per-capita amount pursuant to subsection (e) relating to providing financial support for release preparation for other inmates; and

“(C) the highest inmate wage rates;

“(2) not approve any agreement with respect to furnishing services of the type described in section 4122(b)(6)(D)(iii) of this title;

“(3) not approve any agreement with respect to furnishing construction services described in section 4122(b)(6)(D)(iv) of this title, unless to be performed within a Federal correctional institution;

“(4) not approve an agreement that does not meet the standards of subsection (b); and

“(5) request a determination from the International Trade Commission (and such other executive branch entities as may be appropriate), regarding whether a product or service is of the type being produced or performed in the United States by noninmate workers, whenever the Board determines that such an additional assessment is warranted, including upon a request from an interested party presenting information that the Board deems to warrant such additional assessment prior to the Board’s consideration of the proposed agreement.

“(g) LIMITATIONS ON THE USE OF THE AUTHORITY.—

“(1) NO SALES BY FEDERAL PRISON INDUSTRIES.—Federal Prison Industries is prohibited from directly offering for commercial sale products produced or services furnished by Federal inmates, including through any form of electronic commerce.

“(2) DURATION.—

“(A) No proposed agreement pursuant to this subsection may be approved by the Board of Directors after September 30, 2016.

“(B) Performance of all such agreements shall be concluded prior to October 1, 2021.”

(b) REVIEW AND REPORTING BY THE ATTORNEY GENERAL.—Not less than biannually, beginning in fiscal year 2008, the Attorney General shall meet in person jointly with the Chairman of the Board of Directors and the Chief Executive Officer of Federal Prison Industries to review the progress that Federal Prison Industries is making in maximizing the use of the authority provided by sections 4124a and 4124b of title 18, United States Code. The Attorney General shall provide annually a written report to the Committees on the Judiciary and Appropriations of the House of Representatives and the Senate addressing such progress by Federal Prison Industries.

(c) GAO ASSESSMENT OF WORK-BASED TRAINING PROGRAM.—

(1) IN GENERAL.—The Comptroller General of the United States shall undertake an on-going assessment of the authority granted by section 4124b of title 18, United States Code, as added by subsection (a).

(2) MATTERS TO BE ASSESSED.—In addition to such other matters as the Comptroller General deems appropriate, the assessment shall include—

(A) efforts to recruit private for-profit business entities to participate;

(B) the quality of training provided to inmates;

(C) the amounts and types of products and services that have been produced incident to the work-based training programs;

(D) the types of worksite arrangement that encourage business concerns to voluntarily enter into such partnerships;

(E) the extent and manner of the participation of supervisory, quality assurance, and other management employees of the participating business entity in worksites within correctional facilities of various levels of security;

(F) the extent of the facilities, utilities, equipment, and personnel (other than security personnel) provided by the host correctional agency, and extent to which such resources are provided on a nonreimbursable basis;

(G) the rates of wages paid to inmate workers and the effect that such wage rates have on willingness of business entities to participate;

(H) any complaints filed regarding the displacement of noninmate workers or of inmate workers being paid less than required wages and the disposition of those complaints;

(I) any sanctions recommended relating to displacement of noninmate workers or payment of less than the required wages, and the disposition of such proposed sanctions;

(J) the extent to which the new authority provided additional inmate work opportunities assisting the Bureau of Prisons in attaining its objective of providing 25 percent of the work-eligible inmates with work opportunities within Federal Prison Industries;

(K) measures of any adverse impacts of implementation of the new authority on business concerns using noninmate workers that are engaged in providing similar types of products and services in direct competition; and

(L) a compilation of data relating work opportunities for Federal inmates with work assignments with Federal Prison Industries provided by—

(i) sales to Federal agencies pursuant to the status of Federal Prison Industries as a mandatory source of supply during the period fiscal year 1990 through fiscal year 2007;

(ii) sales to Federal agencies of services, both through non-competitive interagency transfers and as a result of direct competition from private-sector offerors during the period fiscal year 1990 through fiscal year 2007;

(iii) performance as a subcontractor to a Federal prime contractor or Federal subcontractor at a higher tier beginning in fiscal year 1990;

(iv) introduction of inmate-furnished services into the commercial market, beginning in the second quarter of fiscal year 1998;

(v) alternative inmate work opportunities, beginning in fiscal year 2007, provided by agreements with—

(I) non-profit organizations, pursuant to section 4124a(b)(1) of title 18, United States Code, as added by section 10(b), and section 10(c);

(II) religious organizations, pursuant to section 4124a(b)(2) of title 18, United States Code;

(III) units of local governments, school districts, or other special purpose districts, pursuant to section 4124a(b)(3) of title 18, United States Code;

(IV) work-based Employment Preparation Programs for Federal inmates, pursuant to section 4124b of title 18, United States Code, as added by section 11; or

(V) other means.

(3) OPPORTUNITY FOR PUBLIC COMMENT.—The Comptroller General shall provide an opportunity for public comment on the proposed scope and methodology for the assessment required by paragraph (1), making such modifications in response to such comments as he deems appropriate.

(4) REPORTS AND RECOMMENDATIONS.—

(A) IN GENERAL.—The Comptroller General shall submit to the Congress in accordance with this subsection two interim reports and a final report of the assessment of implementation of the new authority, including such recommendations as the Comptroller General may deem appropriate.

(B) INTERIM REPORTS.—The two interim reports shall encompass the assessment of the implementation of the new authority—

(i) from the effective date of the authority through the end of fiscal year 2007; and

(ii) from the effective date of the authority through the end of fiscal year 2010.

(C) FINAL REPORT.—The final report shall assess the implementation of the new authority from the effective date of the authority through the end of fiscal year 2013.

(D) SUBMISSION TO CONGRESS.—The Comptroller General shall submit the reports required by this paragraph within 6 months after the end of the fiscal years referred to in subparagraphs (B) and (C).

(d) CONFORMING AMENDMENT.—Section 1761 of title 18, United States Code, as amended by section 7, is further amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) inserting after subsection (d) the following new subsection:

“(e) This section shall not apply to products produced or services furnished with inmate labor incidental to the work-based training program authorized pursuant to section 4124b of this title.”.

**SEC. 12. RESTRUCTURING THE BOARD OF DIRECTORS.**

(a) IN GENERAL.—Section 4121 of title 18, United States Code, is amended to read as follows:

**“§ 4121. Federal Prison Industries; Board of Directors: executive management**

“(a) Federal Prison Industries is a government corporation of the District of Columbia organized to carry on such industrial operations in Federal correctional institutions as authorized by its Board of Directors. The manner and extent to which such industrial operations are carried on in the various Federal correctional institutions shall be determined by the Attorney General.

“(b)(1) The corporation shall be governed by a board of 11 directors appointed by the President.

“(2) In making appointments to the Board, the President shall assure that 3 members represent the business community, 3 members represent organized labor, 1 member shall have special expertise in inmate rehabilitation techniques, 1 member represents victims of crime, 1 member represents the interests of Federal inmate workers, and 2 additional members whose background and expertise the President deems appropriate. The members of the Board representing the business community shall include, to the maximum extent practicable, representation of firms furnishing services as well as firms producing products, especially from those industry categories from which Federal Prison Industries derives substantial sales. The members of the Board representing organized labor shall, to the maximum practicable, include representation from labor unions whose members are likely to be most affected by the sales of Federal Prison Industries.

“(3) Each member shall be appointed for a term of 5 years, except that of members first appointed—

“(A) 2 members representing the business community shall be appointed for a term of 3 years;

“(B) 2 members representing labor shall be appointed for a term of 3 years;

“(C) 2 members whose background and expertise the President deems appropriate for a term of 3 years;

“(D) 1 member representing victims of crime shall be appointed for a term of 3 years;

“(E) 1 member representing the interests of Federal inmate workers shall be appointed for a term of 3 years;

“(F) 1 member representing the business community shall be appointed for a term of 4 years;

“(G) 1 member representing the business community shall be appointed for a term of 4 years; and

“(H) the members having special expertise in inmate rehabilitation techniques shall be appointed for a term of 5 years.

“(4) The President shall designate 1 member of the Board as Chairperson. The Chairperson may designate a Vice Chairperson.

“(5) Members of the Board may be reappointed.

“(6) Any vacancy on the Board shall be filled in the same manner as the original appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member’s predecessor was appointed shall be appointed for the remainder of that term.

“(7) The members of the Board shall serve without compensation. The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, to attend meetings of the Board and, with the advance approval of the Chairperson of the Board, while otherwise away from their homes or regular places of business for purposes of duties as a member of the Board.

“(8)(A) The Chairperson of the Board may appoint and terminate any personnel that may be necessary to enable the Board to perform its duties.

“(B) Upon request of the Chairperson of the Board, a Federal agency may detail a Federal Government employee to the Board without reimbursement. Such detail shall be without interruption or loss of civil service status or privilege.

“(9) The Chairperson of the Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

“(c) The Director of the Bureau of Prisons shall serve as Chief Executive Officer of the Corporation. The Director shall designate a person to serve as Chief Operating Officer of the Corporation.”.

(b) CONTINUED GOVERNANCE.—The members of the Board of Directors serving on the date of enactment of this Act, and the person selected by them as Chairman, shall continue to exercise the duties and responsibilities of the Board until the earlier of—

(1) the date on which the President has appointed at least 6 members of the Board and designated a new Chairman, pursuant to section 4121 of title 18, United States Code (as added by section 12(a) of this Act); or

(2) the date that is 365 days after the date of enactment of this Act.

**SEC. 13. PROVIDING ADDITIONAL MANAGEMENT FLEXIBILITY TO FEDERAL PRISON INDUSTRIES OPERATIONS.**

Section 4122(b)(3) of title 18, United States Code, is amended—

(1) by striking “(3)” and inserting “(3)(A)”; and

(2) by adding at the end the following new paragraphs:

“(B) Federal Prison Industries may locate more than one workshop at a Federal correctional facility.

“(C) Federal Prison Industries may operate a workshop outside of a correctional facility if all of the inmates working in such workshop are classified as minimum security inmates.”.

**SEC. 14. TRANSITIONAL PERSONNEL MANAGEMENT AUTHORITY.**

Any correctional officer or other employee of Federal Prison Industries being paid with nonappropriated funds who would be separated from service because of a reduction in the net income of Federal Prison Industries during any fiscal year specified in section 4(e)(1) shall be—

(1) eligible for appointment (or reappointment) in the competitive service pursuant to title 5, United States Code;

(2) registered on a Bureau of Prisons reemployment priority list; and

(3) given priority for any other position within the Bureau of Prisons for which such employee is qualified.

**SEC. 15. FEDERAL PRISON INDUSTRIES REPORT TO CONGRESS.**

Section 4127 of title 18, United States Code, is amended to read as follows:

**“§ 4127. Federal Prison Industries report to Congress**

“(a) IN GENERAL.—Pursuant to chapter 91 of title 31, the board of directors of Federal Prison Industries shall submit an annual report to Congress on the conduct of the business of the corporation during each fiscal year and the condition of its funds during the fiscal year.

“(b) CONTENTS OF REPORT.—In addition to the matters required by section 9106 of title 31, and such other matters as the board considers appropriate, a report under subsection (a) shall include—

“(1) a statement of the amount of obligations issued under section 4129(a)(1) of this title during the fiscal year;

“(2) an estimate of the amount of obligations that will be issued in the following fiscal year;

“(3) an analysis of—

“(A) the corporation’s total sales for each specific product and type of service sold to the Federal agencies and the commercial market;

“(B) the total purchases by each Federal agency of each specific product and type of service;

“(C) the corporation’s share of such total Federal Government purchases by specific product and type of service; and

“(D) the number and disposition of disputes submitted to the heads of the Federal departments and agencies pursuant to section 4124(e) of this title;

“(4) an allocation of the profits of the corporation, both gross and net, to—

“(A) educational, training, release-preparation opportunities for inmates;

“(B) opening new factories; and

“(C) improving the productivity and competitiveness of existing factories;

“(5) an analysis of the inmate workforce that includes—

“(A) the number of inmates employed;

“(B) the number of inmates utilized to produce products or furnish services sold in the commercial market;

“(C) the number and percentage of employed inmates by the term of their incarceration; and

“(D) the various hourly wages paid to inmates employed with respect to the production of the various specific products and types of services authorized for production and sale to Federal agencies and in the commercial market; and

“(6) data concerning employment obtained by former inmates upon release to determine whether the employment provided by Federal Prison Industries during incarceration provided such inmates with knowledge and skill in a trade or occupation that enabled such former inmate to earn a livelihood upon release.

“(c) PUBLIC AVAILABILITY.—Copies of an annual report under subsection (a) shall be made available to the public at a price not exceeding the cost of printing the report.”.

**SEC. 16. DEFINITIONS.**

Chapter 307 of title 18, United States Code, is amended by adding at the end the following new section:

**“§ 4131. Definitions**

“As used in this chapter—

“(1) the term ‘assembly’ means the process of uniting or combining articles or components (including ancillary finished components or assemblies) so as to produce a significant change in form or utility, without necessarily changing or altering the component parts;

“(2) the term ‘current market price’ means, with respect to a specific product, the fair market price of the product within the meaning of section 15(a) of the Small Business Act (15 U.S.C. 644(a)), at the time that the contract is to be awarded, verified through appropriate price analysis or cost analysis, including any costs relating to transportation or the furnishing of any ancillary services;

“(3) the term ‘import-sensitive product’ means a product which, according to Department of Commerce data, has experienced competition from imports at an import to domestic production ratio of 25 percent or greater;

“(4) the term ‘labor-intensive manufacture’ means a manufacturing activity in which the value of inmate labor constitutes at least 10 percent of the estimate unit cost to produce the item by Federal Prison Industries;

“(5) the term ‘manufacture’ means the process of fabricating from raw or prepared materials, so as to impart to those materials new forms, qualities, properties, and combinations;

“(6) the term ‘reasonable share of the market’ means a share of the total purchases by the Federal departments and agencies, as reported to the Federal Procurement Data System for—

“(A) any specific product during the 3 preceding fiscal years, that does not exceed 20 percent of the Federal market for the specific product; and

“(B) any specific service during the 3 preceding fiscal years, that does not exceed 5 percent of the Federal market for the specific service; and

“(7) the term ‘services’ has the meaning given the term ‘service contract’ by section 37.101 of the Federal Acquisition Regulation (48 C.F.R. 36.102), as in effect on July 1, 2004.”

**SEC. 17. IMPLEMENTING REGULATIONS AND PROCEDURES.**

(a) **FEDERAL ACQUISITION REGULATION.**—

(1) **PROPOSED REVISIONS.**—Proposed revisions to the Governmentwide Federal Acquisition Regulation to implement the amendments made by this Act shall be published not later than 60 days after the date of the enactment of this Act and provide not less than 60 days for public comment.

(2) **FINAL REGULATIONS.**—Final regulations shall be published not later than 180 days after the date of the enactment of this Act and shall be effective on the date that is 30 days after the date of publication.

(3) **PUBLIC PARTICIPATION.**—The proposed regulations required by subsection (a) and the final regulations required by subsection (b) shall afford an opportunity for public participation in accordance with section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b).

(b) **BOARD OF DIRECTORS.**—

(1) **IN GENERAL.**—The Board of Directors of Federal Prison Industries shall issue regulations defining the terms specified in paragraph (2).

(2) **TERMS TO BE DEFINED.**—The Board of Directors shall issue regulations for the following terms:

- (A) Prison-made product.
- (B) Prison-furnished service.
- (C) Specific product.
- (D) Specific service.

(3) **SCHEDULE FOR REGULATORY DEFINITIONS.**—

(A) Proposed regulations relating to the matter described in subsection (b)(2) shall be published not later than 60 days after the date of enactment of this Act and provide not less than 60 days for public comment.

(B) Final regulations relating to the matters described in subsection (b)(2) shall be published not less than 180 days after the date of enactment of this Act and shall be effective on the date that is 30 days after the date of publication.

(4) **ENHANCED OPPORTUNITIES FOR PUBLIC PARTICIPATION AND SCRUTINY.**—

(A) **ADMINISTRATIVE PROCEDURE ACT.**—Regulations issued by the Board of Directors shall be subject to notice and comment rulemaking pursuant to section 553 of title 5, United States Code. Unless determined wholly im-

practicable or unnecessary by the Board of Directors, the public shall be afforded 60 days for comment on proposed regulations.

(B) ENHANCED OUTREACH.—The Board of Directors shall use means designed to most effectively solicit public comment on proposed regulations, procedures, and policies and to inform the affected public of final regulations, procedures, and policies.

(C) OPEN MEETING PROCESSES.—The Board of Directors shall take all actions relating to the adoption of regulations, operating procedures, guidelines, and any other matter relating to the governance and operation of Federal Prison Industries based on deliberations and a recorded vote conducted during a meeting open to the public, unless closed pursuant to section 552(b) of title 5, United States Code.

(c) SECRETARY OF LABOR.—

(1) SCHEDULE FOR REGULATORY ACTION.—Upon receipt of a request from the Federal Prison Industries Board of Directors, pursuant to section 11(d)(2), to establish an inmate training wage pursuant to section 14(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(a)), the Secretary of Labor, in consultation with the Attorney General, shall issue—

(A) an advanced notice of proposed rulemaking within 60 days;

(B) an interim regulation with concurrent request for public comments within 180 days; and

(C) a final regulation within 365 days.

(2) ALTERNATIVE TO TIMELY ISSUANCE.—In the event that the Secretary of Labor fails to issue an interim inmate training wage by the date required by paragraph (1)(B), the Federal Prison Industries Board of Directors may prescribe an interim inmate training wage, which shall be in an amount not less than 50 percent of the amount of the minimum wage prescribed pursuant to section 6(a)(1) of such Act (29 U.S.C. 206(a)(1)).

(3) CONTINUED USE OF INTERIM INMATE TRAINING WAGE.—

(A) The interim inmate training wage issued pursuant to paragraph (1)(B) or prescribed under paragraph (2) shall remain in effect until the effective date of a final regulation, issued pursuant to paragraph (1)(C).

(B) An eligible entity having an approved agreement with Federal Prison Industries pursuant to section 4124b of title 18, United States Code, may continue to pay participating inmates at the wages prescribed in the agreement for the duration of the agreement, if those wages comply with the standards of the interim inmate training wage issued pursuant to paragraph (1)(B) or prescribed under paragraph (2).

(4) EXISTING AGREEMENTS WITH NONCONFORMING WAGES.—Any for-profit business concern having an agreement with Federal Prison Industries in effect on the date of enactment of this Act, under which Federal inmates are furnishing services that are being introduced into the commercial market, may continue to pay wages at rates specified in the agreement for the duration of the term of such agreement.

**SEC. 18. RULES OF CONSTRUCTION.**

(a) AGENCY BID PROTESTS.—Subsection (e) of section 4124 of title 18, United States Code, as amended by section 2, is not intended to alter any rights of any offeror other than Federal Prison Industries to file a bid protest in accordance with other law or regulation in effect on the date of the enactment of this Act.

(b) JAVITS-WAGNER-O'DAY ACT.—Nothing in this Act is intended to modify the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.).

**SEC. 19. EFFECTIVE DATE AND APPLICABILITY.**

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

(b) APPLICABILITY.—Section 4124 of title 18, United States Code, as amended by section 2, shall apply to any requirement for a product or service offered by Federal Prison Industries needed by a Federal department or agency after the effective date of the final regulations issued pursuant to section 17(a)(2), or after September 30, 2007, whichever is earlier.

**SEC. 20. CLERICAL AMENDMENTS.**

The table of sections for chapter 307 of title 18, United States Code, is amended—

(1) by amending the item relating to section 4121 to read as follows:

“4121. Federal Prison Industries; Board of Directors: executive management.”;

(2) by amending the item relating to section 4124 to read as follows:

“4124. Governmentwide procurement policy relating to purchases from Federal Prison Industries.”;

(3) by inserting after the item relating to section 4124 the following new items:

“4124a. Additional inmate work opportunities through public service activities.

“4124b. Re-entry employment preparation through work-based training and apprenticeship.”.

(4) by amending the item relating to section 4127 to read as follows:

“4127. Federal Prison Industries report to Congress.”;

and

(5) by adding at the end the following new items:

“4130. Construction of provisions.

“4131. Definitions.”.

#### PURPOSE AND SUMMARY

H.R. 2965, the “Federal Prison Industries Competition in Contracting Act of 2006,” amends title 18 to require Federal Prison Industries Inc. (FPI) to compete for its contracts with private sector firms and provides a five-year transition period during which FPI adjusts to obtaining inmate work opportunities through other than its mandatory source status. Additionally, the legislation provides for inmate access to remedial and other rehabilitative opportunities to better prepare inmates for a successful return to society, including authorizing alternative inmate work opportunities in support of non-profit organizations and other public service programs.

H.R. 2965 incorporates H.R. 1829, the “Federal Prison Industries Competition in Contracting Act of 2003,” which was reported by the Committee by voice vote on July 25, 2003 and passed the House on November 6, 2003 by a vote of 350–65. H.R. 1829 was similar to H.R. 1577, the “Federal Prison Industries Competition in Contracting Act of 2002,” which was reported by the Committee by voice vote on April 24, 2002.

As reported by the Committee, H.R. 2965, contains additional provisions to ensure successful transition by FPI by authorizing a new Work-Based Employment Preparation Program for Federal inmates. Under this program, private-sector firms can enter into agreements with FPI for the production of products or the furnishing of services to be sold in the commercial market, for which there is no domestic production. H.R. 2965 is designed to facilitate a successful transition by FPI from simply taking contracts pursuant to its status as a mandatory source and winning contracts competitively. The bill includes a provision that would allow FPI to be listed as providing goods and services comparable to private-sector firms holding contracts under the Multiple Award Schedules (MAS) Program administered by the General Services Administration, although Government corporations are ineligible to be MAS Program contract holders.

During the five-year period of transition to competition, H.R. 2965, permits the FPI Board of Directors to allow FPI to take more than a reasonable share of the market for an authorized product or service, if needed to maintain inmate employment. To avoid a displacement of current inmate workers, H.R. 2965 “grandfathers” all of FPI’s current agreements with private-sector firms that result in the introduction of inmate-furnished services in the commercial market. H.R. 2965 also grandfathers State or local prison industry programs to complete their existing agreements.

H.R. 2965 reflects improvements adopted by the Committee and by the House during the 107th and 108th Congresses. It retains the extensive provisions of the Conyers-Frank Amendment to H.R.

1577, which increases access to educational opportunities, including remedial and modern “hands-on” vocational programs, which have been shown to be more effective in reducing recidivism (33 percent) than traditional prison inmate work programs (24 percent). The bill provides statutory authorization for an inmate’s “gate fund” to facilitate a successful reentry into society. H.R. 2965 also reflects a House Floor amendment to H.R. 1829 approved during the 108th Congress, offered by Representative Waters and Representative Millender-McDonald, that would increase the wages paid to FPI workers, especially those within 24 months of release.

H.R. 2965 provides alternative inmate work opportunities, and authorizes the production of products or the furnishing of services for donation to community service organizations. It authorizes FPI workers to perform work in support of non-profit entities. In several States, State inmates construct components for Habitat for Humanity using donated materials and components, while learning the building trades. The opportunity for alternative rehabilitative inmate work opportunities was further expanded through a Floor amendment to H.R. 1829, during the 108th Congress, which provided a structured program through which Federal inmate workers may also perform public service work for units of local government or special purpose districts such as school districts. The Ohio Department of Corrections has been able to use such public service work opportunities to create more inmate jobs than is provided by its traditional prison industries program. The new authorities contain enforceable protections to avoid unfair competition with the private sector or public employees.

During a legislative hearing on S. 346, the Senate companion to H.R. 1829,<sup>1</sup> Harley G. Lappin, Director of the Federal Bureau of Prisons and FPI’s Chief Executive Officer, in response to a question from Senator Carl Levin, the sponsor of S. 346, stated: “We are in favor of relying less on mandatory source, if not elimination \* \* \* as long as we can pursue products and services in other areas that allow us to keep inmates productively occupied.” H.R. 2965 provides those alternative rehabilitative inmate work opportunities.

## BACKGROUND AND NEED FOR THE LEGISLATION

### A. HISTORY

The Federal Bureau of Prisons (BOP) is responsible for the custody and care of more than 181,000 Federal offenders. Approximately 85 percent of these inmates are confined in BOP correctional facilities or detention centers. Prisoners who are physically able to work must labor in some capacity five days a week. The Federal Prison Industries (FPI), a government corporation that operates the BOP’s correctional program, employs inmates in the Federal prison population to manufacture goods for and provide services to Federal agencies. About 20 percent of inmates work in FPI factories. They generally work in factory operations, such as metals, furniture, electronics, textiles, and graphic arts. FPI work assignments pay from 23¢ to \$1.15 per hour.

<sup>1</sup> Hearing held on April 7, 2004 before the Subcommittee on Financial Management, the Budget, and International Security of the Senate Committee on Governmental Affairs.

Although FPI is precluded from selling its goods in the commercial market under 18 U.S.C. section 1761, the BOP has taken the position that the language prohibiting interstate transport of goods does not prohibit it from selling services in the commercial market. Many private companies and small businesses have trouble competing with the advantages the prison industry enjoys such as a guaranteed market for its products and reduced costs for labor and capital.

In fiscal year (FY) 2004, FPI operated 102 factories in 71 correctional facilities producing products and services in approximately 150 broad classes under the trade name UNICOR. In FY 1998, FPI had total sales of \$534.2 million and employed 20,200 inmates (18.3 percent). In FY 2004, FPI employed 19,337 inmates, with a total sales of \$802.7 million and a profit of \$120.4 million. Federal agencies are required by law, under 18 U.S.C. section 4124, to purchase FPI products if a product is available that meets the agencies' requirements and does not exceed current market prices. This provision in the law, deemed "mandatory source preference," does not specify how the current market price should be determined. The General Accounting Office (GAO) concluded in a 1998 report to Congress that "the only limitation on FPI's price is that it may not exceed the upper end of the current market price range."

The "mandatory source preference" given FPI is viewed as an exception to the Federal Acquisition Regulation standards established for a "fair and reasonable price." Thus, agencies are required to purchase products from FPI regardless of whether FPI provides the agency with a price it considers reasonable or factually supports the price it offered. Recent amendments to Federal law allow agency contracting officers to determine if a product offered by FPI is "comparable to products available from the private sector that best meet the Department's needs in terms of price, quality, and time of delivery."<sup>2</sup> If a contracting officer finds that FPI's offered product is not comparable, then the purchase is to be made using competitive procedures. There is no need to obtain a so-called "waiver" from FPI prior to making the purchase. Section 2410n only requires that FPI be accorded the same right to compete as any other eligible offeror, but does not grant to FPI any preferential status in the competitive process.

FPI's 2004 Annual Report states that "the number of inmates participating in the FPI program has decreased by more than 3,000 in the last three years." It has been asserted that this is the result of the enactment and implementation of 10 U.S.C. § 2410(n) and the extension of the effect of section 2410n to the Civilian Agencies of the Government.<sup>3</sup> Under the provision, Civilian Agency contracting officers can exercise the same authorities in dealing with FPI and its mandatory source status that DOD contracting officers have had available since Section 2410(n) was added to the Title X of the United States Code by Section 811 of Public Law 107-107, the National Defense Authorization Act for Fiscal Year 2002.

However, the question remains how FPI could have lost inmate work opportunities when FPI's total sales and its operating profits

<sup>2</sup> 10 U.S.C. § 2410(n).

<sup>3</sup> Section 637 of Title VI (General Provisions—Departments, Agencies, and Corporations) of Division F (Transportation, Treasury, and Independent Agencies Appropriations, 2004) of P.L. 108-7, the Consolidated Appropriations Act, 2004.

have increased substantially over the same three fiscal years. FPI's sales were \$678.7 million for Fiscal Year 2002 and increased to \$802.7 million in FY 2004. Similarly, FPI profits increased from \$71.4 million in FY 2002 to \$120.4 million in FY 2004. Only one of the eight Business Groups showed a decrease in revenues during the three years cited. Due to purchases made by the Department of Defense, on a non-competitive basis, in support of ongoing military operations, two of FPI's Business Groups showed very substantial increases. The sales of the Electronics Business Group increased from \$152.4 million in FY 2003 to \$255.2 million in FY 2004. The sales of FPI Clothing and Textile Business Group increased from \$158.4 million in FY 2003 to \$184.5 million in FY 2004. Such expansions should have generated substantial inmate jobs sufficient to offset any loss of inmate work assignments associated with decrease in sales of FPI's Office Furniture Business Group from \$151.9 million in FY 2003 to \$140.9 million in FY 2004. Historical data regarding FPI sales, profits, and inmate employment suggest an inconsistent correlation. For example, in FY 1998, FPI had total sales of \$534.2 million, with a loss of \$2.4 million, and yet was able to employ 20,200 inmates (18.3%), while it could only employ 19,337 inmates in FY 2004 with total sales of \$802.7 million and a profit of \$120.4 million.

Opponents of this legislation maintain that FPI is completely self-sufficient and serves a vital purpose. FPI provides inmates with employment skills and the opportunity to learn a trade that will help them obtain a job upon release. Some studies have shown that inmates who participate in work programs are less likely to commit new offenses. Additionally, allowing prisoners to work helps productivity and minimizes opportunities for conflict within the prison. Some wages paid to the prisoners are directed toward restitution owed to their victims.

#### B. DETAILED SUMMARY

H.R. 2965 would fundamentally alter the 1934 authorizing statute of Federal Prison Industries ("FPI"), requiring that FPI compete for its business opportunities and no longer be able to take them on a sole-source basis. Currently, all Federal agencies must purchase products offered by FPI, which is commonly referred to as FPI's "mandatory source" status. FPI, rather than the buying agency, determines if FPI's offered product, price, and delivery schedule meets the mission needs of the buying agency.

This bill gradually phases out the exclusive right of FPI, deemed "mandatory source," to sell goods on an exclusively non-competitive basis to federal agencies by October 1, 2011. The bill also changes the manner in which FPI sells its products and services to the various Federal departments and agencies. During the phase-out period, FPI would be required to provide the agencies with a product that meets its needs at a "fair and reasonable price" in a timely manner.

Today, FPI's offered price meets the "current market" price standard if it does not exceed the highest price offered to the Government for a comparable item, even if no actual sales have been made at that price. Under the Federal Acquisition Regulations (FAR), a federal manager must obtain FPI's unilateral permission to even solicit competitive offers from the private sector in an effort

to obtain “best value” for the taxpayer dollars entrusted to such manager’s care.

To enable FPI to adjust to the requirement that it obtain contracts on a competitive basis, H.R. 2965 provides FPI with a five-year transitional period to adjust from its sole-source dealings with its currently captive Federal agency customers. Under this phase-out authority, Federal agencies could continue to contract with FPI on a noncompetitive basis through October 1, 2011, subject to annually declining caps on the use of the preferential contracting authority. During the first transitional year, FY 2007, Federal agencies could make noncompetitive awards to FPI in an amount not to exceed 90 percent of FPI’s sales in FY 2002. The percentage decreases to 85 percent in FY 2008, 70 percent in FY 2009, 55 percent in FY 2010, and 40 percent in the final transitional year FY 2011. During the phase-out period, FPI would be required to provide a buying agency with a product that meets the buying agency’s needs, when needed, at a “fair and reasonable price.”

To assure that the loss of a contract by FPI does not endanger the safety of a Federal Correctional Institution (FCI), H.R. 2965 contains a provision that permits the Attorney General to authorize a sole source contract award to prevent idleness “that could reasonably be expected to significantly endanger the safe and effective administration” of the FPI at which the work required by the contract is scheduled to be performed. To prevent abuse of this sole-source authority by FPI, the provision requires that the Attorney General’s decision to authorize the sole source contract award be supported by findings by the FCI’s warden.

H.R. 2965 does not alter a broad array of competitive advantages that FPI enjoys with respect to private sector firms. The great majority of inmates working for FPI will continue to be paid at rates below the minimum wage. FPI factory space is provided by the host FCI and is constructed at taxpayer expense. Similarly, FPI receives its utilities from the host FCI. As a Government corporation, FPI may receive industrial equipment excess without cost from other Departments and agencies, including the substantial quantities of industrial equipment returned to the Department of Defense by its contractors. FPI has had a \$20 million line-of-credit from the U.S. Treasury on an interest-free basis since 1988.

In addition to requiring that FPI compete for its Federal agency sales, H.R. 2965 improves the process by which FPI’s Board of Directors considers proposals from FPI’s career management staff to authorize production expansion. The bill provides clearer standards to guide the Board’s deliberations regarding expansion proposals. It improves, and makes independent the process by which the impact on private sector suppliers is evaluated. It increases the opportunities for public comment on the proposed expansions and assures that the Board has direct access to those comments. For the first time, it extends the public participation and Board approval procedures to expansion proposals relating to services as well as expansion proposals relating to products.

The legislation also substantially modifies the structure of FPI’s Board of Directors. Currently, the FPI Board of Directors is composed of six members, appointed by the President. Two are public members, one representing the Attorney General and another representing the Secretary of Defense. Of the four private sector mem-

bers, one represents “industry,” one represents “labor,” one represents “agriculture” (although FPI does not sell agricultural products), and one represents “retailers and consumers” (although FPI is not authorized to sell products or services in the commercial market).

H.R. 2965 replaces the current Board with an eleven member Board: three members representing business, three members representing labor, one member with special expertise in inmate rehabilitation techniques, one member representing victims of crime, one member representing inmate workers, and two additional members “whose background and expertise the President deems appropriate.” The restructuring of the Board was modeled after the Internal Revenue Service Oversight Board, enacted as part of the Internal Revenue Service Restructuring and Reform Act of 1998. Most importantly, H.R. 2965 requires that the Board deliberate and make decisions in public rather than in closed session as they do today.

The legislation includes provisions, added through the Conyers-Frank Amendment adopted during the Committee’s consideration of H.R. 1577 during the 107th Congress, that substantially expands alternative rehabilitative opportunities for more Federal inmates to better prepare them for a successful return to society. These provisions were included in the bill that passed the House of Representatives in the 108th Congress as well.

The legislation also seeks to provide increased opportunities to participate in programs providing fundamental remedial education as well as modern hands-on vocational and apprenticeship training. Additionally, the legislation authorizes alternative inmate work opportunities in support of non-profit, community service organizations. For example, FPI workers can provide services to build or recondition for donation to nonprofit organizations to assist low income individuals who would have difficulty purchasing these products on their own. H.R. 2965 also includes a demonstration project to test the cognitive abilities and perceptual skills of Federal inmates to maximize rehabilitation efforts and reduce recidivism. Additionally, the bill clarifies that no more than \$75 million will be authorized for additional educational, training and release preparation opportunities. Finally, H.R. 2965 adds a new Section 13 “Transitional Personnel Management Authority” to provide some relief to correctional officers, whose staff positions are no longer funded from appropriations to the Federal Bureau of Prisons, but through non-appropriated funds, completely dependent upon revenue from FPI “sales.”

This legislation includes provisions, which were developed over a six-month period with representatives of the Attorney General. These provisions are broadly supported by an array of business organizations and labor unions participating in the Federal Prison Industries Competition in Contracting Coalition.

H.R. 2965 creates a new Work-Based Employment Preparation Program under which private-sector firms can enter into agreements with FPI to prepare inmates for re-entry through real-world work coupled with structured apprenticeship-like training. The by-products of this work-based training program, including the production of products and the furnishing of services, may then be sold in the commercial market. To avoid unfair competition with non-

inmate workers, and the firms that employ them, the legislation restricts products of the Work-Based Employment Training Program to products or services for which there is no domestic production. To make the re-entry preparation program more viable, the Secretary of Labor, in consultation with the Attorney General, is directed to issue an inmate training wage under the authority of the Fair Labor Standards Act, which along with other similar special wage rates would be less than the Federal Minimum Wage. H.R. 2965 includes a sense of Congress that the wage set by the Secretary should be no less than 50 percent of the Federal minimum wage under the Federal Labor Standards Act.

In addition to the re-entry preparation provided by the Program, the Work-Based Employment Preparation Program would benefit inmates in a number of ways. A participating firm would be required to issue a reference for inmate successfully completing the Program for a period of 24 months after release. In addition, a participating inmate would be assured to be provided with the documents, include a state-issued identification card, needed to complete an Employment Eligibility Verification (ICE Form I-9) required to get private-sector employment. Inmates not participating in the Program would benefit because funds from private-sector firms participating in the Work-Based Employment Preparation Program would be allocated to other release preparation programs authorized by H.R. 2965.

H.R. 2965, is designed to further facilitate a successful transition by FPI from simply taking contracts pursuant to its status as a mandatory source and winning contracts competitively. The legislation includes a provision that would allow FPI to be listed as providing goods and services comparable to private-sector firms holding contracts under Multiple Award Schedules (MAS) Program administered by the General Services Administration, although Government corporations are ineligible to be MAS Program contract holders. This will enable FPI to keep its offering clearly in the view of the Federal buyer.

H.R. 2965 requires Federal buyers to solicit offers from FPI, an advantage not enjoyed by private-sector firms who must find their Federal contract opportunities. The legislation also requires that a solicitation shall be made to FPI first if the product or service to be acquired would otherwise be furnished by a contractor outside the United States. This provision was added to the legislation at the request of Representative Debbie Wasserman-Schultz (FL-20th).

The legislation, as amended, also gives FPI authority to file agency bid protests, if FPI feels the Federal buyer has not evaluated fairly FPI's offer. No other Government corporation has this authority. FPI is authorized to perform a Government contract won competitively although the FPI Board of Directors has not authorized FPI to produce such a new product or service. In addition the legislation provides for the consideration of the unique costs of dealing with an inmate population in offers for cost-reimbursement contracts by FPI.

#### HEARINGS

H.R. 2965 was introduced on June 17, 2005, and referred to the Committee on the Judiciary Subcommittee on Crime, Terrorism,

and Homeland Security. A hearing on the legislation was held by the Subcommittee on July 1, 2005. Testimony was received from the following witnesses: The Honorable Peter Hoekstra, Member of Congress, 2nd District, Michigan; Paul A. Miller, Director of Governmental Affairs, Independent Office Products and Furniture Dealers; Dr. Reginald A. Wilkinson, Ohio Department of Rehabilitation and Corrections; and Phillip Glover, President of Council of Prison Locals, American Federation of Government Employees.

COMMITTEE CONSIDERATION

On July 12, 2006, the Committee met in open session and ordered favorably reported the bill H.R. 2965, with an amendment, by voice vote, a quorum being present.

VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that the following rollcall votes occurred during the committee's consideration of H.R. 2965.

Representative Chabot offered an amendment in the nature of a substitute, which would have replaced the text of the bill with the establishment of a Commission to study the issue of mandatory source and make recommendations with regard to mandatory source and inmate work opportunities and rehabilitative opportunities. This amendment was defeated by a rollcall vote of 9–28.

Rollcall No. 1, Date: 7–12–06

COMMITTEE ON THE JUDICIARY

U.S. HOUSE OF REPRESENTATIVES

109TH CONGRESS, 2ND SESSION

Subject: Chabot Amendment in the Nature of a Substitute to H.R. 2965, which was not agreed to by a rollcall vote of 9 ayes to 28 nays.

	Ayes	Nays
MR. HYDE .....	X	
MR. COBLE .....		X
MR. SMITH .....		X
MR. GALLEGLY .....	X	
MR. GOODLATTE .....	X	
MR. CHABOT .....	X	
MR. LUNGREN .....	X	
MR. JENKINS .....		X
MR. CANNON .....		X
MR. BACHUS .....	X	
MR. INGLIS .....		X
MR. HOSTETTLER .....		X
MR. GREEN .....	X	
MR. KELLER .....		X
MR. ISSA .....		X
MR. FLAKE .....		X
MR. PENCE .....		X
MR. FORBES .....		X
MR. KING .....		X
MR. FEENEY .....		X
MR. FRANKS .....		X

	Ayes	Nays
MR. GOHMERT .....		X
MR. CONYERS .....		X
MR. BERMAN .....		X
MR. BOUCHER .....		
MR. NADLER .....		X
MR. SCOTT .....	X	
MR. WATT .....		X
MS. LOFGREN .....	X	
MS. JACKSON LEE .....		X
MS. WATERS .....		X
MR. MEEHAN .....		X
MR. DELAHUNT .....		
MR. WEXLER .....		X
MR. WEINER .....		X
MR. SCHIFF .....		X
MS. SANCHEZ .....		X
MR. VAN HOLLEN .....		X
MRS. WASSERMAN SCHULTZ .....		X
MR. SENSENBRENNER, CHAIRMAN .....		X
TOTAL .....	9	28

Representative Scott offered an amendment which sought to strike the section of the bill that prohibits Federal Prison Industries and state prison industries from contracting for work to provide services. This amendment was not agreed to by a rollcall vote of 9–28.

Rollcall No. 2

COMMITTEE ON THE JUDICIARY

U.S. HOUSE OF REPRESENTATIVES

109TH CONGRESS, 2ND SESSION

Subject: Scott Amendment (#2) to the Sensenbrenner Amendment in the Nature of a Substitute to H.R. 2965, which was not agreed to by a rollcall vote of 9 ayes to 28 nays.

	Ayes	Nays
MR. HYDE .....	X	
MR. COBLE .....		X
MR. SMITH .....		X
MR. GALLEGLY .....	X	
MR. GOODLATTE .....	X	
MR. CHABOT .....	X	
MR. LUNGREN .....	X	
MR. JENKINS .....		X
MR. CANNON .....	X	
MR. BACHUS .....		
MR. INGLIS .....		X
MR. HOSTETTLER .....		X
MR. GREEN .....	X	
MR. KELLER .....		X
MR. ISSA .....		X
MR. FLAKE .....		X
MR. PENCE .....		X
MR. FORBES .....	X	
MR. KING .....		X
MR. FEENEY .....		X
MR. FRANKS .....		X
MR. GOHMERT .....		X
MR. CONYERS .....		X

	Ayes	Nays
MR. BERMAN .....		X
MR. BOUCHER .....		
MR. NADLER .....		X
MR. SCOTT .....	X	
MR. WATT .....		X
MS. LOFGREN .....		X
MS. JACKSON LEE .....		X
MS. WATERS .....		X
MR. MEEHAN .....		X
MR. DELAHUNT .....		
MR. WEXLER .....		X
MR. WEINER .....		X
MR. SCHIFF .....		X
MS. SANCHEZ .....		X
MR. VAN HOLLEN .....		X
MRS. WASSERMAN SCHULTZ .....		X
MR. SENSENBRENNER, CHAIRMAN .....		X
TOTAL .....	9	28

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

#### COMMITTEE COST ESTIMATE

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee believes that the bill will have no cost for fiscal year (FY) 2007, and that the cost incurred in carrying out H.R. 2965 would be \$444 million for FY 2008 to FY 2012. The Committee estimate of these costs is as follows:

H.R. 2965 will require that Federal agencies make their purchases from FPI on a competitive basis, when fully implemented. It provides FPI a five-year transition period to adjust to obtaining its contracts on a competitive basis rather than simply taking them on a sole-source basis pursuant to its current status as a mandatory source of supply. Most importantly, the legislation provides alternative rehabilitative and work opportunities for Federal inmates, as fully described in the Committee's report.

H.R. 2965 contains the same levels of authorizations of appropriations for the alternative rehabilitative programs and alternative inmate work opportunities as those specified in H.R. 1829, the bill in the 108th Congress. The Committee's cost estimate is derived from the cost estimate by CBO relating to those new programs and their associated authorizations of appropriations.

The Committee estimates that implementing H.R. 2965 would cost \$444 million over the 2008–2012 period, subject to appropria-

tion of the necessary amounts. The bill does not affect direct spending by FPI.

The legislation establishes a program that would authorize inmates with FPI work assignments to produce products or furnish services in support of the public service activities of non-profit organizations and units of local government and special purpose districts of such units of local government. Further, it would authorize such inmate workers to produce products or furnish services for donation by non-profit organizations. It would authorize the appropriation of \$5 million per fiscal year for fiscal years 2008 through 2012 for implementing the new public service program and \$7 million a year for fiscal years 2008 through 2012 to carry out the new donation program. Assuming the appropriation of the authorized amounts, the Committee estimates that implementing these programs would cost about \$25 million and \$35 million respectively over the 2008–2012 period. All costs of the donation program would be subject to appropriation action. Section 10 would authorize the Attorney General to establish a Federal Enhanced In-Prison Vocational Assessment and Training Program in Federal institutions and would authorize the appropriation of \$75 million each year beginning in 2008 for such program. Assuming the appropriation of the specified amounts, the Committee estimates that implementing this new program would cost \$375 million over the 2008–2012 period. Finally, the legislation provides \$3 million per fiscal year for fiscal year 2008 through 2010 to conduct a demonstration program to assess cognitive abilities of Federal inmates to maximize the effectiveness of remedial and vocational programs made available to such inmates.

Due to the many safeguards that have been included in this bill to help FPI make the five-year transition to competition, FPI's many on-going multi-year requirements-type contracts with Department of Defense contracts, and the ability of FPI to partner with not-for-profits and private sector companies to sell products and services not being domestically provided, the Committee does not believe that the elimination of mandatory source will result in a decline in inmate work opportunities available through FPI. The Committee believes that the additional vocational programs and the other opportunities provided to train inmates and prevent "inmate idleness" will prevent the asserted need to hire additional correctional officers.

The Committee does not believe that H.R. 2965 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). Section 7 of the legislation does have an effect on State and local government operations of prison industry programs. However, the Committee believes for the reasons described below that this section does not create an unfunded mandate.

Section 1761(a) of Title 18, United States Code, prohibits the results of inmate labor from being sold in interstate or foreign commerce. This prohibition applies equally to inmates incarcerated by State and local governments and the Federal Bureau of Prisons. Section 1761(c) of Title 18, first enacted in 1979, provides the principal exception to the general prohibition on the commercial sale of the results of inmate labor contained in 18 U.S.C. 1761(a). It authorizes the Prison Industry Enhancement (PIE) Program under which a State-sponsored prison industry program may be author-

ized to sell in the commercial market, either directly or through a private-sector partner, products produced, or services furnished, by inmates incarcerated by the State or one of its units of local government. Each proposed PIE project must apply for PIE certification from the Bureau of Justice Assistance (BJA) at the Department of Justice.

Section 7 (Clarifying Amendment Relating to Services) of H.R. 2965 makes explicit that the statutory prohibition on the sale of the results of inmate labor in interstate commerce or foreign commerce contained in 18 U.S.C. 1761(a) applies equally to services as well as products. For 65 years, this statute was consistently interpreted to prohibit the commercial sale of inmate-furnished services as well as inmate-produced products-only recently was it reinterpreted by the Office of Enforcement Operations in DOJ's Criminal Division, which provides legal services to FPI and the Bureau of Prisons. This "new" interpretation provided FPI and the prison industries of the States and their local governments, authority to sell inmate furnished services, either directly or in partnerships with private sector firms, without meeting the standards for PIE certification.

Section 7 merely clarifies that the statute's prohibition against displacement of non-inmate workers to provide jobs for inmate workers and the requirement to pay inmate workers providing products or services to the commercial market creates comparable to wages being paid non-inmate workers of private firms providing the same types of products or services shall apply and not the unilateral decision of the attorneys for the Bureau of Prisons. Section 7 contains a "grandfathering" provision, which permits the completion of any existing agreement with a private sector partner or gives a state program making direct sales a 2-year grace period. The provision makes explicit that after the expiration of the specified "grace periods," a State-sponsored prison industry must comply with the requirements of the Prison Industry Enhancement Act.

This bill contains no new private-sector mandates as defined in the Unfunded Mandates Reform Act.

The Committee would finally note with substantial emphasis that the use of competitive procurement techniques to obtain goods and services, rather than relying on non-competitive contract awards to a sole-source supplier, have consistently been shown to result in procurement savings, through expenditure avoidance, in the range between 10 and 30 percent. This standard was first established through the substantial work done by the U.S. General Accounting Office (GAO) during the mid-1980s in response to the case of egregious spare-parts overpricing confronted by the Department of Defense. The benefits of competitive acquisition techniques have been consistently validated through subsequent work by GAO and the various Inspectors General (IG), most notably the Department of Defense Inspector General. Some of this subsequent work suggests that savings at the higher end of the range.

In FY 2004, FPI had sales of \$802.7 million, up from \$666.8 million in FY 2003. Such sales make FPI the 49th largest contractor to the Federal Government. All of FPI sales to the Federal agencies are on a basis other than full and open competition.

The use of competitive procurement procedures by FPI's currently captive Federal agency customers, required by the bill, rath-

er than sole-source contracting procedures Federal agencies are now compelled to use when purchasing from FPI pursuant to its mandatory source authority, should result in savings. Based on FPI's sales in FY 2004 that means that potential savings in acquisition costs in the range of \$80 million to \$240 million are possible.

Further, competitive procurement techniques have been consistently shown to improve the quality of the products being offered. H.R. 2965 provides agency acquisition managers with the tools currently available to them in their dealings with private-sector suppliers of products and services.

Competitive procurement techniques also improve the timeliness of deliveries by vendors who know that their past performance records will have a significant impact on the likelihood of winning future business. Timely deliveries can result in savings through cost avoidance. If a Federal agency does not have to extend on a month-to-month basis the lease on its current space because late deliveries preclude the occupancy of its new leased space, the agency avoids wasting taxpayer money for space that cannot be occupied.

Under the competitive contracting procedures required by H.R. 2965, FPI cannot avoid the standard that must met by all others to the Federal Government: the unambiguous obligation to offer a product or service that the buying agency finds to represent the "best value" for the taxpayer dollars being spent and then to fully and timely perform its contractual obligations.

The amount of FPI's sales to the various Federal agencies, like the sales volume of any private sector contractor, will be determined by the extent that FPI is able to provide a high quality product, when needed, at the best price, all tested in the crucible of competition.

If FPI's sales fall, it confirms that FPI's captive Federal agency customers have been forced by FPI's mandatory source status to accept products and contract performance at prices that are not even an approximation of "best value". In essence, these currently captive Federal agencies have been involuntarily subsidizing FPI's operations with the taxpayer dollars appropriated for the conduct of their missions on behalf of the public.

Lastly, the Committee observes that some suggest that the enactment of H.R. 2965 will result in reduced opportunities for inmate employment, raising the specter of mass idleness within Federal correctional institutions. In fact, the vast majority of inmates have work assignments helping to maintain the institutions in which they are incarcerated. They help prepare meals, run laundries, maintain grounds, and help do electrical, plumbing, carpentry repairs and other similar institutional support work. Only the balance of inmate workers have work assignments with FPI. Based upon FPI employment figures for FY 2004, approximately 85 percent of Federal inmates had institutional work assignments. Approximately 15 percent of Federal inmates had FPI work assignments. Only these inmates could be affected by the enactment of H.R. 2965. Rather than reducing the potential for inmate work assignments, H.R. 2965 authorizes additional types of alternative inmate work opportunities, seeking to change the future direction of FPI's attainment of its self-specified goal of trying to provide employment for 25 percent of the inmate population. The alternative

inmate work opportunities authorized by H.R. 2965 will not subject non-inmate workers, and the firms that employ them, to the unfair competition in the Federal procurement market that now flows from each annual FPI expansion.

#### PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 2965 is intended to reform the Federal Prison Industries to require FPI to compete for its contracts with private sector firms and provide a five-year period during which FPI adjusts to obtaining inmate work opportunities through other than its mandatory source status. Additionally, the legislation is intended to provide for inmate access to remedial and vocational opportunities and other rehabilitative opportunities to better prepare inmates for a successful return to society.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 18 of the Constitution.

#### SECTION-BY-SECTION ANALYSIS AND DISCUSSION

##### *Sec. 1. Short Title; Table of Contents*

Subsection (a) of this section establishes the bill's citation as the "Federal Prison Industries Competition in Contracting Act of 2006".

Subsection (b) sets forth a table of contents of headings of the various sections of the bill.

##### *Sec. 2. Government-wide procurement policy relating to purchases from Federal Prison Industries*

Subsection (a) of revised section 4124 of title 18, United States Code, makes explicit that a purchase of a product or service from Federal Prison Industries, Inc. (FPI) by a Federal agency shall be purchased through a procurement transaction awarded pursuant to section 4124, as amended. Such procurements shall be made on a competitive basis, except to the extent that an other than competitive award is expressly authorized by revised section 4124.

Under current section 4124(a), FPI has been accorded the status of a mandatory source of supply under the Government-wide Federal Acquisition Regulation (FAR) in FAR Subpart 8.6 (Acquisition from Federal Prison Industries, Inc.) (48 CFR 8.6). A Federal agency is required to acquire from FPI, on a sole-source basis, any product of the type listed in FPI's Schedule of Products published by FPI, which has adopted and uses the trade name "UNICOR."

On March 26, 2004, FAR Subpart 8.6 was modified to reflect the enactment of Section 637 of division F of the Consolidated Appropriations Act of 2004 (Public Law 108-199), which required that, for Fiscal Year 2004, the procedures of section 2410n of title, United States Code, be given government-wide application through the FAR. Section 637 of division H of the Consolidated Appropriations Act of 2005 (Public Law 108-447) extended to all government agencies procedures of Section 2410n for Fiscal Year 2005, and

each subsequent fiscal year. In response, FAR Part 8.6 was again modified by an Interim Rule on April 5, 2005, which extended the earlier modifications for Fiscal Year 2005, and subsequent fiscal years. On January 3, 2006, a Final Rule was issued, which left substantively unchanged the prior Interim Rules.

FAR Part 8.6, as modified, requires a Federal agency buyer, before making a purchase a product from FPI, which is listed in FPI's Schedule of Products, to conduct appropriate market research to determine if the product offered by FPI is comparable in quality, timeliness of delivery, and price with products available from private sector firms. If the agency buyer determines that FPI's offered product is comparable, then a purchase must be made from FPI or, pursuant to FAR 8.605 (Clearances), FPI's authorization, referred to by FPI as a "waiver," must be obtained pursuant to FPI's procedures. Under FPI's current waiver procedures, the decision to grant a waiver is made unilaterally by FPI.

If the agency buyer determines that FPI's product is not comparable then the purchase must be made on a competitive basis. An offer must be solicited from FPI. The requirement to solicit an offer from FPI applies only to products which FPI has been authorized to offer for sale by its Board of Directors and which are listed in FPI's Schedule of Products. The requirement to solicit an offer from FPI does not apply to any service offered by FPI. FPI's authorizing statute does not provide any explicit statutory authority to offer services to any Federal agency. FPI, however, has for many years done so. It follows that there is procurement preference accorded to services offered by FPI. FPI, however, has asserted a preferential status for the services it offers and agencies have acquired them through interagency transfers, foreclosing any opportunity for private sector firms to make an offer on such agency needs for such services.

FAR Part 8.603 (Purchase priorities) states in paragraph 8.603(b)(2) that Federal buying agencies are to give FPI a priority with respect to services needed by the buying agency. Such direction to the Federal agency buyer is, in the Committee's opinion, without basis under current law, and would be expressly contrary to Section 4124, as amended. The determination by the agency buyer regarding the comparability of a product offered by FPI is a unilateral determination by the contracting officer, not subject to appeal by FPI. Section 2410n specifically forecloses FPI from invoking the disputes mechanism of current section 4124(c) of title 18, United States Code. Prior to the modification of FAR 8.6, in response to the previously cited statutory provisions, FPI, rather than the buying agency, determined whether the FPI-offered product met the mission needs of the buying agency. Similarly, FPI, rather than the buying agency, determined if FPI's proposed delivery schedule met the mission needs of the buying agency. Finally, FPI, rather than the buying agency, determined the reasonableness of FPI's price.

Revised section 4124 is intended to fundamentally change the business relationship between a Federal agency and FPI and realign that relationship to mirror the business relationship that exists between a Federal agency and a private sector supplier. The revised section 4124 eliminates any statutory basis for either the "clearance" process of current FAR Part 8.6 or FPI's so-called "waiver" process. As previously mentioned, FPI's authorizing stat-

ute currently does not provide explicit authority for FPI to sell services to the various Federal agencies. The statute has been interpreted to authorize FPI to offer services to Federal agencies. FPI's mandatory source status does not apply, but it is clear that Federal agencies typically obtain services from FPI after a non-competitive negotiation on the basis that a purchase from FPI is an interagency transfer rather than a procurement, and thus, is not subject to the statutory and regulatory procedures for the solicitation, award, and administration of procurement contracts. The revised section 4124 makes explicit that services as well as products obtained from FPI by a Federal agency should be obtained through procurement contracts.

Subsection (b) of revised section 4124 addresses the solicitation of offers from FPI by the various Federal agencies and the subsequent award of a contract to FPI on either a competitive or sole-source basis. Paragraph (1)(A) of subsection (b) places a general affirmative responsibility on the various Federal agencies to solicit an offer from FPI when making a purchase, above the Micro-purchase Threshold, for any product or service authorized by FPI's Board of Directors to be offered for sale by FPI and listed in the UNICOR (FPI's trade name) Schedule of Products. Subsection (c) contains a limitation relating to solicitations that have been reserved for competition among small business concerns. The Micro-purchase Threshold is established in Section 32(g) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(g)) by Section 4001 of Public Law 104-355, the "Federal Acquisition Streamlining Act of 1994". It is currently set at \$2,500.

Prospective contractors, whether the smallest of small businesses, or a multinational corporation, are responsible for identifying Federal contracting opportunities. New paragraph (1)(A) is one of several reflected in revised section 4124, and elsewhere in the bill, that accord FPI a limited preference status in the procurement designed to facilitate FPI's ability to compete for Federal Contracts. Paragraph (1)(B) of subsection (b) makes explicit that the requirements of subparagraph (A) apply when the Federal agency is intending to acquire a product or service to meet the agency's need by placing an order against one or more of the contracts maintained by the General Services Administration (GSA) under its Multiple Award Schedule (MAS) Program. Under the MAS Program, GSA negotiates the terms and conditions of an array of contracts to provide the Federal agencies with existing contractual vehicles through which such agencies may obtain easier access to commercial products and services offered by commercial firms. As with any procurement, the buying agency determines which offeror represents the "best value" for the taxpayer dollars being expended.

Paragraph (1)(C) authorizes FPI, upon its request, to have notices placed in the lists maintained by GSA of firms holding MAS contracts, stating that FPI offers products or services which FPI believes are comparable to the products or services being offered by Schedule contract holders. The provision is not intended to affect FPI's ineligibility to be evaluated for award of a MAS Schedule contract, given its status as a wholly-owned Government corporation, specifically prohibited from making sales of products or services in the commercial market. Although not a Schedule contract holder,

the provision grants FPI the preference of having its offerings listed in the same manner and with the same frequency as a holder of a Schedule contract. For example, if FPI is authorized to offer institutional seating, FPI's notice would appear along with the listing of the firms actually holding Schedule contracts. If the category of institutional seating is further subdivided within the listing, FPI should also be listed with the firms holding a Schedule contract. GSA would be responsible for monitoring the text of FPI's proposed notice to make certain that FPI's notice does not, in any way, convey to Federal agency buyers that FPI enjoys any preference for award over commercial firms holding MAS contracts. FPI's placement within the list of Schedule contract holders would similarly be determined by GSA. Such listings must be requested by FPI. The provision places no affirmative responsibility on GSA to place a listing in any Schedule without a request from FPI.

The authority to be listed, granted by paragraph (2)(C), like the underlying solicitation requirement of Subparagraph (A), only applies to a product or a service which FPI has been authorized to offer for sale by its Board of Directors, pursuant to 4122 of title 18, United States Code, as amended by Section 3 (Public Participation Regarding Expansion Proposals by Federal Prison Industries) of the bill. Paragraph (2) of subsection (b) requires the use of competitive procedures for the solicitation and award of a contract to FPI, unless the use of other than competitive procedures is authorized pursuant to Paragraph (3), Paragraph (7) of revised section 4124(b), or is authorized pursuant to section 303(c)(7) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(7)). The contract shall be awarded to FPI, only if the contracting officer determines that FPI's offer represents the "best value." Paragraph (3) of subsection (b) requires the non-competitive negotiation of a contract award to FPI, if the Attorney General makes a determination that: (i) there is no reasonable expectation that FPI will win the contract award competitively, and (ii) the inmate work opportunities provided by the contract are necessary "to prevent circumstances that could reasonably be expected to significantly endanger the safe and effective administration" of the correctional facility at which the contract is to be performed. Paragraph (4) of subsection (b) makes explicit the authority of the contracting officer to evaluate FPI's offer with respect to whether: (i) FPI's offered product or service will meet the agency's requirements; (ii) timely performance by FPI can reasonably be expected; and (iii) the price offered by FPI represents a current market price. These authorities of the contracting officer apply equally whether the contract is for a product or a service, or is to be awarded after a competition or on a sole-source basis, unless the award is made pursuant to new paragraph (3) of subsection (b).

Subsection (b)(4) is intended to make explicit that any product or service offered by FPI must comply with the full range of performance and design specifications that would be demanded of a product or service furnished by a private sector offeror. For example, FPI or its product or service would have to comply with any pre-qualification requirements, such as a QML (Qualified Manufacturers List) or QPL (Qualified Products List). Similarly, design specifications (relating to quality of materials used or manner of manufacture) or performance specifications (relating to durability, serv-

iceability, or interoperability) would have to be met. Further, products furnished by FPI should be required to conform to the same commercial or governmental standards and pass the same tests required of products furnished by private sector vendors. FPI's status as a government corporation operating within the Federal correctional system should not diminish, in any degree, its responsibility to furnish to a Federal agency a quality product or service that meets the agency's mission or program needs to the same extent as a product or service furnished by a private sector supplier.

Subsection (b)(4) is also intended to make explicit the contracting officer's authority regarding the time of performance being offered by FPI. Timely performance is frequently as important as the quality of the product or service being furnished. Under the new provision the contracting officer may independently evaluate promises of timely performance being made by FPI. Pursuant to Section 1091 of Public Law 103-355, the "Federal Acquisition Streamlining Act of 1994", and implementing FAR coverage, a contracting officer is now required to accord substantial weight to each offeror's history of timely performance with respect to prior contracts, especially for the product or service being offered, when making the decision to award a new contract. Such an evaluation on the basis of "past performance" will now fully apply to FPI.

Subsection (b)(4) is further intended to make explicit the contracting officer's authority to make an independent determination as to whether the price being offered by FPI represents a current market price. This applies equally with regard to whether FPI is offering a product or service. Currently, the term "current market price" is not defined in FPI's authorizing statute or in the government-wide Federal Acquisition Regulation (FAR) provisions pertaining to purchases from FPI. Section 16(2) of the bill adds such a definition. The proposed definition includes explicit recognition of the contracting officer's authority to employ generally available price analysis or cost analysis techniques to determine whether FPI's offered price meets the standard.

The provisions of new section 4124, making explicit a contracting officer's authority in dealing with FPI, are intended to overturn a sweeping legal opinion by the Assistant Attorney General for the Office of Legal Counsel, issued on September 13, 1993. The opinion, Application of the Federal Acquisition Regulations to Procurement from Federal Prison Industries, unequivocally holds that FPI is not subject to the Federal Acquisition Regulation (FAR), except the FAR provisions relating to FPI as a mandatory source of supply. A federal agency cannot compel FPI, like a private contractor, to meet the agency's contractual terms and conditions regarding: (i) quality of product delivered or services furnished; (ii) the reasonableness of offered prices (or require the justification of any price increases); or the delivery schedule for products (or a schedule of performance relating to a service).

The legal opinion was issued at FPI's request to respond to a 1991 report by the Inspector General of the Department of Defense (DOD). In DOD Procurements from Federal Prison Industries, (Audit Report No. 92-005; October 11, 1991), overpricing, averaging 15 percent, was identified in 48 of 54 contracts (89 percent) awarded to FPI by various DOD buying centers for electronic components and electrical cables during a seven-year period, FY 1984

through FY 1990. Although the contracts were awarded on a non-competitive basis, FPI did not provide the current, accurate, and complete cost data or pricing data needed by the contracting officer to determine whether the Government is being charged a fair and reasonable price. Further, FPI was found to lack the accounting systems to generate reliable cost or pricing data. The DOD Inspector General recommended that FPI refund the amounts found to be over-pricing.

The legal opinion specifically held that "DOD lacks the necessary contracting freedom to make FPI accept the FAR's constraints." "\* \* \* as a matter of law, it [FPI] retains ultimate statutory authority to set its own prices, subject to arbitration" by a statutorily-specified board composed of the President (delegated to the Director of the Office of Management and Budget), the Attorney General, and the Administrator of General Services, which according to the GAO last met in the 1930s to arbitrate a performance dispute.

This subsection is also necessary because of FPI's current unique pricing standard. Under current 4124(a) of FPI's authorizing statute the price FPI charges its Federal agency customers cannot exceed a "current market price," however, the statute does not define current market price. Rather FPI operates on the basis of a 1931 Arbitration Board decision that says that FPI's price meets the statutory "current market price" standard, if the price FPI intends to charge its Federal agency customer does not exceed the highest price at which a comparable product was offered to the Government (not actually purchased).

Those opposing modification to the FPI program frequently assert that FPI is self-sustaining. It is true that FPI receives little direct appropriations. It is not true, however, that FPI is self-sustaining. Its status as a mandatory source of supply, permit it to take the appropriations of its captive Federal agency customers to the extent that FPI's products do not represent the best value for the taxpayer dollars being spent with FPI by a Federal buying agency.

With regard to over-pricing, corroboration is provided by a 1991 report by the DOD Inspector General (IG) and GAO reports in 1993 and 1998. On October 11, 1991, the DOD IG issued Audit Report No. 92-005, DOD Procurements from Federal Prison Industries, in response to a DOD IG HOTLINE allegation. The DOD IG reviewed a sample of FPI contracts, over a seven-year period (FY1984 to FY1990), to supply electronic and electrical cables to DOD. The audit report found overpricing in 89 percent of the contracts that averaged 15 percent. On October 5, 1998, the DOD IG issued Audit Report No. 99-001, Defense Logistics Agency Procurements from Federal Prison Industries, Inc. The DOD IG reviewed 1,786 contracts awarded during FY96 and FY97 for items, 87 percent of the textiles, for which DLA made purchases from FPI and commercial sources. Even for textiles, items for which FPI is especially competitive due to its lower labor costs, FPI's prices were higher than commercial vendors in 42 percent of the contracts reviewed.

On July 7, 1993, GAO issued Report No. GGD 93-51R, entitled FPI Systems Furniture. In accessing FPI pricing for systems furniture, the GAO compared FPI's pricing with the prices available from commercial vendors through the GSA's Multiple Award Schedule (MAS) Program. FPI's prices were higher than the offered

prices of 9 of the 11 commercial systems furniture vendors under the MAS Program. FPI's prices averaged 15 percent higher than the prices of the three commercial vendors whose sales in 1992 aggregated to 60 percent of the systems furniture sales under the GSA MAS Program. Further, the three most successful commercial suppliers were not simply "low-end product" vendors. Similar findings regarding furniture products as well as other products are reported in *Federal Prison Industries: Information on Product Pricing*: (GAO/GGD-98-151; August 24, 1998).

Paragraph (5) of Subsection (b) requires that the Attorney General's determination made pursuant to subsection (b)(3) of revised section 4124 must be supported by two specific findings. First, the warden of the correctional institution containing the factory scheduled to perform the work required by the contract must determine that without the work the "safe and effective administration of such facility" would be "significantly endangered". Second, FPI's chief operating officer must provide substantiated findings regarding why FPI "does not expect to win the contract on a competitive basis".

The standard for the determination by the warden does not even suggest, must less require, that the warden find that loss of the contract at issue will result in loss of control of the institution, as some have asserted. The enunciated standard is, on its face, substantially lower. The warden's determination is fully recognized as concurrently judgmental and prospective in nature. The specific supporting findings contemplated by the provision relate to the number of inmates with FPI work assignments that would be affected by the loss of the contract as a percentage of the total number of inmates with FPI work assignments, and other factors affecting the good order of the institution, such as the degree to which the institution is overcrowded.

The requirements proposed in new Section 4124(b)(5) mirrors the current requirements applicable to the Department of Justice in order to make a sole-source purchase under the authority of Section 303(c)(7) of the Federal Property and Administrative Services Act of 1947 (41 U.S.C. 253(c)(7)), which requires the Attorney General to make a personal determination that a contract award cannot be made competitively, but is "necessary in the public interest". A sole-source purchase, pursuant to Section 303(c)(7), can only be made by the Attorney General, on a non-delegable basis and require a 30-day wait period after making the report to Congress. The new authority is unencumbered by any delay requirement and the responsibility may be delegated. The Committee expects that, if the Attorney General's responsibilities are delegated, they not be delegated to anyone with FPI or the Federal Bureau of Prisons, or below the level of an Assistant Deputy Attorney General.

Paragraph (6) of subsection (b) provides that the buying activity may resume its generally applicable contract solicitation and award procedures, if the Attorney General has not authorized a sole source negotiation pursuant to new Section 4124(b)(3) within 30 days. It is anticipated that any notice of a contracting opportunity published prior to the release of a solicitation for competitive offers will specify that an offer is required to be solicited from FPI and that the Attorney General is empowered to determine that the contracting opportunity will be negotiated with FPI on a sole-source

basis. Paragraph (7) of subsection (b) recognizes a Federal agency is authorized to make a purchase from FPI on a sole-source basis if the buying agency determines that the needed product or service is currently only available from FPI. Paragraph (8) of subsection (b) authorizes the Federal Bureau of Prisons (BOP) to make purchases from FPI on a non-competitive basis. This recognizes a long-standing tradition of having inmates produce as many of the products that they use daily. For example, FPI produces uniforms worn by the inmates, eyeglasses, industrial safety as well as prescription, plastic service with which the inmates eat their meals, and the mattresses and bed linens upon which they sleep.

The Committee considered, and soundly rejected, a proposal to grant the Attorney General new blanket authority to make sole-source purchases from FPI to meet any need of any element of the Department of Justice. The various operating elements of the Department of Justice represent a very substantial amount of Federal business opportunities, which should not be randomly foreclosed from bidding by private-sector firms, and their non-inmate workers, whose tax dollars the Attorney General is spending. According to the most recent data available from the Federal Procurement Data Center, the Department of Justice made purchases of \$ 4.047 billion in Fiscal Year 2004, making DOJ the 6th largest purchaser among the Federal departments and agencies.

Paragraph (9) of subsection (b) requires the various buying agencies to first solicit an offer from FPI on a non-competitive basis with respect to a product or service that would otherwise likely be furnished by a contractor performing work outside of the United States. There is no requirement that the product or service has already been authorized for sale by the FPI Board of Director and be listed in FPI's Schedule of Products.

Subsection (c) of revised Section 4124 makes explicit that a competitive offer timely received from FPI will always be considered, unless the competition is restricted to small businesses, a so-called "small business set-aside", conducted pursuant to Section 15(a) of the Small Business Act (15 U.S.C. 644(a)). Subsection (c) of revised Section 4124 of title 18, United States Code, was further amended by an amendment offered by Rep. Darrel Issa (CA-49), which added a new paragraph (2) to Subsection (c). New subsection (c)(2) would authorize FPI to exclude from its offered price the costs specifically related to producing the product or furnishing the service in a correctional setting. This provision contemplates that FPI will have developed and implemented, prior the utilization of this authority, a cost accounting system that enable FPI to reliably and accurately capture such costs and to allocate them to FPI's offered price in a consistent manner. This provision would seem to be intended to make allowable the costs of contract performance in a correctional setting. If such new cost accounting system meets the standards of the Federal Acquisition Regulation and the associated Cost Accounting Standards, such system should also permit FPI to be able to compete for Federal contracting opportunities that provide for the reimbursement of the successful offeror's costs of performance, rather than only those awarded on a unit price basis.

Subsection (d) of revised Section 4124 codifies the fundamental principle that FPI is required to perform its contractual obligations to the same extent as any private sector contractor. Attainment of

FPI's prison management and inmate-rehabilitation objectives do not authorize FPI to furnish non-conforming products or services, perform late, or unilaterally increase prices to the detriment of a Federal agency customer who requires timely performance of the services or delivery of products to perform its functions on behalf of the public and to be good stewards of the taxpayers' money.

It is intended that the implementation of this provision through the government-wide Federal Acquisition Regulation (FAR) will afford to an agency contracting officer administering a contract with FPI the same array of contract administration techniques, authorities, and remedies available when administering a contract with a private contractor. Disputes between the administrative contracting officer and FPI regarding whether FPI's performance conforms to the terms of the contract would be subject only to appeal rights granted to FPI pursuant to new subsection (e) of revised Section 4124.

FPI's Federal agency customers have had to bear the additional costs of late deliveries by FPI as well as problems with FPI furnishing to them products that failed to meet the buying agency's stated requirements and FPI's promised performance. Various studies have led credence to those complaints. For example, on July 31, 1998, GAO issued *Federal Prison Industries: Delivery Performance Improving but Problems Remain* (GAO/GGD-98-118; June 30, 1998).

Further support for the need to empower the contracting officer to require full contractual performance was included in a particularly thorough 1992 report by the DOD Inspector General, *Quality Assurance Actions Resulting from Electronic Component Screening*, Report No. 92-099. During a review of DOD quality assurance programs for assessing the quality of electronic components and cables furnished to DOD during FY1988-90, the DOD Inspector General found that among the top-20 suppliers of electronic components, FPI ranked 8th in terms of sales, but first in number of Product Quality Deficiency Reports (PQDRs) identified, 106 out of 170. Among all the contractors furnishing electronic components and cables to DOD during the review period, the DOD IG identified the contractors with most PQDRs. Three FPI factories were among the top-15 poor performers, with 100 PQDRs out of 245, or 40.1% of the total. The seriousness of these quality deficiencies found by the DOD Inspector General is amplified when it is recognized that many contracting officers don't even bother to cite FPI for quality deficiencies, since, in practical terms, FPI determines the validity of any quality delinquency report made against any FPI product.

Subsection (e) of revised Section 4124 is intended to eliminate the existing bias in favor of FPI in the resolution of disputes arising during the negotiation of a sole-source contract award to FPI pursuant to its mandatory source status or during FPI's subsequent performance of the contract. Under current 18 U.S.C Section 4124(b), and the FAR provisions implementing the statute, any dispute relating to the "price, quality, character, or suitability of such [FPI] products" shall be arbitrated by a board consisting of the President (delegated to the Director of the Office of Management and Budget), the Attorney General, and the Administrator of General Services. "Their decision shall be final and binding upon all parties." This statutory disputes resolution provision currently

gives FPI total dominance over its Federal agency customers, in practical business terms.

Prior to the statutorily-mandated modifications to FAR Part 8.6, previously described, a contracting officer had to obtain FPI's permission through its "waiver" process, if the contracting officer wanted to purchase an FPI-offered product from an alternative source. To obtain a waiver from FPI, the contracting officer had to prove to FPI's satisfaction that: (i) the FPI-offered product does not meet the agency's requirements; (ii) FPI's delivery schedule will not meet the agency's mission requirements, or (iii) FPI's price does not represent a "current market price". FPI's "waiver process" has no statutory basis. However, it discouraged contracting officers from scrutinizing FPI's offers, since disagreements were settled by FPI.

FPI is still accorded the similar superior position with respect to disputes arising during the performance of the contract. FPI's decision regarding the adequacy of its own performance prevails, unless overturned by a decision of the statutorily-specified arbitration board. Like the "waiver process" during the contract-award phase, FPI's statutorily-sanctioned dominance makes a contracting officer's demand for timely performance or fully conforming products or services futile. Except with respect to FPI, a contracting officer's final decision regarding contract performance is otherwise binding with respect to a private sector contractor.

Paragraph (1) of subsection (e) specifies that the decision of a contracting officer regarding the award of a contract to FPI or relating to the performance of a contract awarded to FPI shall be final, unless the decision is overturned pursuant to the procedures specified regarding the disposition of an appeal made by FPI. The provision requires that any appeal by FPI shall be through the appeal processes specified in Paragraphs (2) and (3) of revised Section 4124(e). Paragraph (2) of subsection (e) authorizes the FPI's Chief Operating Officer to file an agency protest relating to the award of a contract to FPI pursuant FAR Part 33.103 (Protests to the agency). In the event of an adverse decision regard an agency bid protest, the Assistant Attorney General for Administration may request a reconsideration, de novo, by the head of the buying agency. The decision on reconsideration shall be personally made by the agency head. The decision on reconsideration by the agency head is final.

As a Government-owned corporation, FPI does not have a right to file a protest with the buying agency, with the bid protest forum operated by the Government Accountability Office (GAO), or with the Court of Federal Claims. To facilitate FPI's ability to compete for its Federal contracts, a major concession was made to FPI by granting it access to agency bid protest forums established pursuant to FAR Part 33.103. Requests that FPI be granted access to either the GAO or the court were considered and rejected. Paragraph (3) of subsection (e) gives FPI the right to an independent review of an adverse decision by the agency contracting officer regarding the adequacy of FPI's contract performance. FPI can have an adverse decision decided through one of the various forms of alternative disputes resolution provided in Subchapter IV of Title V, United States Code, such as mediation or binding arbitration by an independent neutral party. To assure the impartiality, both parties

must agree to the use of an alternative disputes resolution technique.

Despite FPI's status as a Government-owned corporation, FPI is also granted the right to appeal an adverse contracting officer's decision relating to FPI's performance of a contract. The Contract Disputes Act of 1978 (41 U.S.C. 601, et seq.) was enacted to provide private-sector contractors with access to impartial forums to resolve disputes relating to the performance of a Federal contract. The Act authorizes the creation of Boards of Contract Appeals. Certain departments and agencies with very substantial procurement activities, such as the Department of Defense and the General Services Administration, maintain their own boards. Other agencies, with very limited procurement activities, have entered into agreements to have their contract performance disputes handled by another agency's board. Given the intra-governmental character of the dispute between FPI and one of its agency customers, an appeal to the Court of Federal Claims is expressly not made available to FPI. The decision of the independent board of contract appeals is final, without further right of appeal.

New subsection (f) of revised Section 4124 requires each Federal agency and department reporting to the government-wide Federal Procurement Data System (FPDS) to report all acquisitions from FPI in the same manner it reports purchases from private sector vendors in excess of the Simplified Acquisition Threshold as defined in Section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11), currently \$100,000. Section 2901 of the "Crime Control Act of 1990", Public Law 101-647, amended 18 U.S.C. 4124 to provide for the reporting of all purchases from FPI. This provision is intended to make explicit the reporting format and level of detail. Until the 1990 amendment, there was no requirement that purchases from FPI be reported to the FPDS by the various Executive agencies because the purchases are considered to be non-reportable "interagency transfers" rather than contracts. The absence of full FPDS data on federal agency purchases from FPI has made it virtually unworkable to make market-share determinations relating to the FPI Board of Directors' consideration of proposals to approve new products to be offered for sale by FPI or to expand production of currently approved products, pursuant to current Section 4122(b). The validity of the market share analyses prepared by FPI staff are generally questioned by the private vendor community because of the inability to make reliable comparisons of agency purchases from private-sector sources and those made from FPI.

Subsection (g) of revised Section 4124 requires FPI to publish and keep current its UNICOR Schedule of Products, which lists both the products and services it has been authorized by its Board of Directors to offer for sale. FPI maintains an extensive electronic bulletin board accessible through the Internet which provides interactive information about its full line of products and services. The bulletin board, like its Schedule of Products and other paper-based promotional materials, makes it explicit that the statutes require FPI be a mandatory source for federal agencies needing any product which FPI offers. It also explains the new procedures required by the statutorily-mandated modifications to FAR Part 8.6.

Subsection (h) makes explicit that FPI's industrial operations are subject to the same Federal occupational, health, and safety standards as private-sector suppliers to the Federal Government. It is the expectation of the Committee that Federal Prison Industries will provide an appropriately safe and environmentally compliant workplace for both its staff and its inmate workers. To do less would be a major disservice to both. The Committee is aware of recent reports concluding that employees as well as inmate workers in one or more of the recycling factories operated by Federal Prison Industries were exposed to toxic or hazardous substances. The Committee is advised that, due to a dispute in the findings of the initial investigation, the Office of the Inspector General in the Department of Justice is undertaking a separate, independent investigation into FPI's electronics recycling program. Since this facility in question was, according to FPI management, adhering to standard FPI procedures relating to electronics recycling, it is not unreasonable to be concerned that similar problems might exist at FPI electronic recycling factories at other correctional institutions. The Committee requests that the Attorney General provide the Committee a briefing on the scope and methodology of the planned inquiry by the Inspector General, and periodic briefings on the status of the investigation while it is being undertaken.

*Sec. 3. Public Participation Regarding Expansion Proposals by Federal Prison Industries*

This section amends Section 4122(b) of title 18, United States Code, relating to the procedures for approving the addition of a new product or service offered for sale by Federal Prison Industries (FPI) or expanded production or performance of a currently approved product or service. The amendments will: (i) conform the public participation processes used by FPI's Board of Directors with those currently used by a very similar federal preference program for purchases from rehabilitative work centers employing the blind and severely handicapped; (ii) clarify the analytical process to determine if an adverse private-sector impact will result from the approval of a proposal to add a new product or service to FPI's product line or expand production or performance of a currently authorized product or service; and (iii) distinguish more clearly between the analytical and advisory responsibilities of FPI's career staff and the decision-making authorities of the Presidentially-appointed FPI Board of Directors.

Paragraph (4) of amended Section 4122(b) authorizes two exceptions under which FPI may sell a new product or sell quantities in excess of its authorized level without obtaining prior approval from the FPI Board of Directors. They are two further examples of modifications to H.R. 2965, as introduced, designed to help FPI make a successful adjustment to obtaining Federal contracts on a competitive basis.

Paragraph (4)(A) authorizes FPI to offer a new specific product or a new specific service in order to respond to a Federal agency's contract solicitation. If FPI is successful in winning the contract, it must seek Board approval before being able to respond to a subsequent solicitation. During the pendency of the public and Board review process pursuant to subparagraphs (5) through (9), FPI may perform any delivery orders, work assignments, or any option af-

fecting the contract term, under, and within the scope, of the competitively awarded contract. If the Board does not authorize the new specific service or new specific item, FPI may only perform further delivery orders work assignments, or option quantities during the contract term in effect at the time the Board made its decision.

Paragraph (4)(B) authorizes FPI to produce a specific product or furnish a specific service in excess of the Board authorized level of production for such product or service to respond to an order under an existing contract, if the buying agency has an exigent need for the products or service. In determining whether exigent circumstances exist, the buying agency must determine whether the circumstances would be sufficient to justify the initial award of the contract pursuant to law and Federal Acquisition Regulations, using other than competitive procedures due to urgent and compelling circumstances. Paragraph (5) of amended Section 4122(b) would apply the public notice and comment requirements of the Administrative Procedure Act (APA) (5 U.S.C. 533) to the procedures used by FPI's Board of Directors when considering a proposal to authorize FPI to produce a new specific product or specific service or significantly expand the production or performance of a currently approved product or service. These APA requirements, the "standard" for public participation, currently apply to an almost identical decision made by the Committee for Purchase from the Blind and Other Severely Handicapped, under a very similar procurement preference program authorized by the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c).

Paragraph (6) of amended Section 4122(b) specifies the analytical requirements that must accompany an expansion proposal from FPI's career management staff. Rather than being conducted by FPI as is presently done, new section (b)(6) would require that the impact analysis be conducted by an independent entity, either an interagency team or a private contractor. The interagency team would consist of representatives of the Department of Labor, the Department of Commerce, and the Federal Procurement Data Center, led by a representative of the Small Business Administration. If the impact analysis is to be conducted by a private contractor, the selection of the contractor and the administration of the contract is to be handled by one of the statutorily designated Federal agencies, operating as an independent executive agent of the FPI Board of Directors. To maintain independence, the participation of FPI staff would be limited to submitting to the buying agency's contracting officer a proposed statement of work for the contractor.

Subparagraph (C) of revised Section 4122(b)(5) specifies the matters to be considered in conducting the impact analysis relating to the expansion proposed by FPI staff. Subparagraph (D) of revised Section 4122(b)(5) sets forth limitations on the authority of the FPI Board of Directors to authorize the production of a new specific product or specific service (or expand production of a currently approved product or service).

First, the provision would preclude the Board from approving a proposal for a new specific product (or the continued sale of a previously authorized product) unless the product is a "prison-made product". Prison industry programs are justified, in part, on the basis that they keep inmates occupied through labor-intensive work and provide skills training for inmates.

Second, the provision would preclude the Board from approving a proposal for a new specific product (or to expand production of a currently authorized product) with respect to products that are “import-sensitive products” or which are produced by an industry with chronic high unemployment. “Import-sensitive products” are designated by the Department of Commerce for other statutory purposes. The Department of Labor currently identifies such industries with chronic high unemployment for other statutory purposes.

Third, the provision would preclude the Board from approving a proposal to authorize inmates to perform a service if such work would provide inmate workers with access to personal or financial information about individual private citizens. It would also preclude inmates from performing a service that would give them access to geographic data regarding the location of surface and sub-surface infrastructure providing communications, water and electrical power distribution, pipelines for the distribution of natural gas, bulk petroleum products, and other commodities, as well as other utilities.

Fourth, the provision would preclude the Board from authorizing FPI from furnishing construction services to Federal agencies. The provision adopts the definition of “construction” that has been a part of the Government-wide Federal Acquisition Regulation for more than two decades. Construction services, almost always provided on the owner’s property, are manifestly unsuitable for performance by prison labor. The provision would not preclude Federal prisoners from continuing to provide maintenance, repair, or even minor alteration of the prison facilities in which they are incarcerated. Such work opportunities, when coupled with access to apprenticeship-type training programs, can provide inmates with greatly increased prospects for finding good-paying jobs in the building trades, which is currently suffering from a severe shortage of skilled workers.

Paragraph (7) of amended Section 4122(b) places in a separate paragraph the “outreach” mechanisms specified in Section 4122(b)(4) of current law, to emphasize that they are “supplemental” techniques to broaden participation by known interested parties. Paragraph (8) of amended Section 4122(b) requires the Board of Directors be furnished actual copies of all of the comments received regarding a proposed expansion, in addition to any summaries prepared by FPI’s career management staff. Paragraph (9) of amended Section 4122(b) specifies in a separate paragraph the requirement in Section 4122(b)(4) of current law that the FPI staff’s final recommendation to FPI’s Board of Directors specify how the staff’s initial production proposal was modified in response to public comments received and the supporting analysis for those modifications.

Paragraph (10) of amended Section 4122(b) requires the FPI Board of Directors to consider and act upon a recommendation to authorize new specific product or specific service, or increase production of currently authorized products or services, or take other actions relating to the governance of the corporation at a meeting open to the public. Such meeting may be closed if specified statutory standards can be met. Paragraph (11) of amended Section 4122(b) empowers the FPI Board of Directors to authorize the donation of products or services. Given that such donation does not

potentially subject private sector firms to unfair competition. The Board need only make a such a decision during an open meeting. A schedule relating to the implementation of this authority is specified in Section 10(b) of the bill. Paragraph (11)(C) empowers the Board to authorize an expansion that could be expected to result in FPI's share of the Federal market exceeding a "reasonable share of the market," as that term is defined in Section 17(6) of the bill. Such authority could be used if such an expansion was specifically requested by the Federal agency having a need for the product or service or is justified for "other good cause." Two-thirds of the appointed members of FPI's new eleven-member Board would have to support an expansion above a reasonable share of the market justified on the basis of "other good cause."

*Sec. 4. Transitional mandatory source authority*

Subsection (a) provides authority to the various Executive agencies to make purchases from FPI on a non-competitive basis during a five-year transition period. This transitional period is intended to provide a period during which FPI adjusts to the requirement that it obtain its business opportunities on a competitive basis rather than a non-competitive basis through its status as a mandatory source. Subsequent subsections provide direction to the buying agencies regarding the use of this special authority.

Subsection (b) makes clear that the buying agency, rather than FPI, is empowered to determine that the product offered by FPI meets the needs of the buying agency. The FPI-offered product is expected to meet the same standards and specifications as the buying agency would apply to a product being offered by a private sector supplier. Similarly, the buying agency is empowered to determine if timely performance by FPI can be reasonably expected before entering into a sole-source negotiation with FPI. Finally, the buying agency need not make a sole-source award to FPI if the buying agency determines that the award price will exceed a "fair and reasonable price."

Subsection (c) makes it explicit that Subpart 15.4 (Contract Pricing) of the Government-wide Federal Acquisition Regulation (FAR) shall guide the buying agency's determination of "fair and reasonable price."

Subsection (d) makes it explicit that, despite the award of the contract pursuant to the special sole-source authority, FPI remains responsible for fully performing its contractual obligations. Performance disputes between the buying agency and FPI are to be resolved pursuant to 18 U.S.C. 4124(e)(3), as added by section 2 of the bill.

Subsection (e) imposes a number of limitations on the buying agencies' use of the transitional sole-source authority during the five-year "phase-out" of FPI's mandatory source status. In general, these limitations are intended to assure that FPI's sales expand on the basis of competitive awards and by taking only necessary advantage of the transitional sole-source authority.

First, contract awards to FPI through use of the transitional sole-source authority cannot exceed a specified percentage of FPI's total sales during the base year of fiscal year 2004. During the first year of the five-year transitional period, fiscal year 2007, use of the special sole source contracting authority cannot aggregate to more

than 90 percent of FPI's total sales during the base year. The percentage decreases to 85 percent in fiscal year 2008, to 70 percent in fiscal year 2009, to 55 percent in fiscal year 2010, and to 40 percent during the final transition year, fiscal year 2011.

Second, use of the special transitional sole-source contract authority cannot result in sales by any of FPI's seven business groups that are in excess of the total sales for each such business group during the base year. Similarly, the use of the transitional authority is prohibited from increasing FPI's sales for a specific product over its total sales of such product during the base year. Since FPI, rather than the buying agency, will have access to information regarding the dollar value of various awards made to FPI pursuant to the transitional authority, the implementing FAR provision relating to this provision should empower the buying agency's contracting officer to obtain an appropriate compliance certification from FPI prior to contract award.

In the event of change in the design specification for a specific product, the costs associated with the implementation of such specification change by FPI shall not be considered for the purposes of computing FPI sales with respect to the specific product or for the business group selling such product. FPI's compliance certification, specified in the implementing FAR provisions, should require FPI to identify the source of the design specification change and its calculation of the associated costs.

Subsection (g) specifies this special five-year transition sole-source authority may not be used by a buying agency on or after October 1, 2011. The provision also makes clear that its use is contingent upon issuance of the essential implementing FAR provisions, pursuant to section 18 of the bill.

Subsection (h) defines terms relating to this section.

Subsection (i) requires the Attorney General to monitor FPI's transition from obtaining work through sole-source awards pursuant to its mandatory source status to obtaining them on a competitive basis. Specifically, the subsection requires the Attorney General to make a determination regarding whether the limitations on the use of the special transitional sole-source authority has resulted, or is likely to result, in a substantial reduction in inmate work opportunities with FPI and "whether such reductions, if any, present a significant risk of adverse effects on safe prison operations or public safety." Such determination and finding is to be made annually, 60 days prior to the end of each of the five fiscal years of the transition period. For the purposes of this section, the term "public safety" means the anticipated impact that any identified inmate idleness may be reasonably expected to have on the safety of the immediate community in which the affected federal correctional institution is located.

If the Attorney General finds a significant risk of adverse effects on either safe prison management or public safety, the Attorney General is required to advise Congress. In advising Congress, the Attorney General is required to make recommendations for additional funding to provide additional alternative inmate rehabilitative opportunities and additional correctional staffing, as may be appropriate.

Subsection (j) adds a new section, Products of Federal Prison Industries: Procedural Requirements, to the Title III of the Federal

Property and Administrative Services Act of 1949 that mirrors the provision of the same name appearing at Section 2410n of title 10, United States Code. The objective is to provide conformity in both primary sources of statutory direction relating to contracting.

*Sec. 5. Authority to perform as a Federal subcontractor*

Subsection (a) of this section provides, for the first time, explicit statutory authority for FPI to perform as a subcontractor or a supplier to a private-sector firm performing a Federal contract as a prime contractor or a subcontractor at any tier. This provision was included to provide FPI a clear path to the inmate work opportunities that are available from producing products for the Federal subcontract market.

FPI's authorizing statute is silent with respect to its authority to act as a subcontractor or supplier. At various times during the 1990s, proposals were advanced to grant FPI specific statutory authority to operate as a subcontractor. Section 4122(a) only authorizes FPI "to produce commodities for consumption in such institutions or for sale to the departments of agencies of the United States, but not for sale to the public in competition with private enterprise."

FPI currently acts as a subcontractor to a number of major prime contractors (or major subsystem subcontractors) furnishing major systems and other equipment to the Department of Defense. FPI also provides inmate-furnished services to these firms.

At various times, FPI has claimed an inherent authority to operate as a subcontractor derived from 18 U.S.C. 4124(a). When challenged by the Department of Justice Inspector General, FPI cited the authority granted by a World War II-era Attorney General's opinion (40 Op. Atty Gen. 207 (1942)). Entitled "Procurement of War Materials from Federal and State Prisons." The opinion was issued on May 6, 1942 by Attorney General Francis Biddle in response to an inquiry from President Franklin D. Roosevelt regarding "whether industrial facilities at the prisons of the United States can be utilized in the production of essential war materials." The opinion was issued despite the prohibition of the Hawes-Cooper Act of 1920, relating to selling convict-made goods in interstate or foreign commerce. The Hawes-Cooper Act is now codified at Sections 1761 and 1762 of Title 18, United States Code. Given the critical need to maximize the Nation's total productive capacity for the War effort, Attorney General Biddle found that FPI, and the various States prison industry programs, could operate as a subcontractor. Subsequently, on June 20, 1942, Assistant Solicitor General Oscar Cox wrote to the Chairman of the War Production Board further clarifying the authority granted by the opinion of the Attorney General. In pertinent part, Mr. Cox found that a prison industry program could function as a subcontractor or supplier only if "there is no other source of supply readily available to him [the Government prime contractor] on the open [commercial] market.

Given long-prevailing competitive market conditions among subcontractors on Federal contracts, it is highly unlikely that this explicit limitation on the World War II authority could be met today. Further, the authority cited by FPI was based on the Nation's exigent productions needs during World War II and conditions have changed since.

Subsection (b) imposes two limitations on FPI's authority to perform as a subcontractor. Under the first limitation, FPI may not perform as a subcontractor or supplier at any tier if the product or service is to be acquired by a Federal agency from a workshop for the blind or other severely handicapped pursuant to the Javits-Wagner-O'Day (JWOD) Act. Under section 3 of the JWOD Act, non-profit organizations operating workshops employing the blind or other severely handicapped are accorded a preferential status in selling products and furnishing services to the various Federal agencies. The Committee is concerned that FPI could use subcontracting with these non-profit organizations to expand its sales, while transferring work opportunities from the blind and handicapped workshops to FPI's factories.

This concern is substantially compounded by the fact that the Chairman of the Committee for the Purchase from the Blind and Severely Handicapped, which administers the program authorized by the JWOD Act, is currently the Chief Operating Officer of Federal Prison Industries. An amendment to make such an arrangement unlawful was contemplated, but jurisdiction over the JWOD Act is with the Committee on Government Reform.

Under the second limitation, FPI may not perform as a subcontractor or supplier at any tier if the product to be acquired by the Federal agency is subject to Section 2533a of title 10, United States Code. Section 2533a is the codification of the so-called "Berry Amendment," a provision annually appearing in the appropriations bill for the Department of Defense. The Berry Amendment requires that certain items of procured by the Department of Defense (DOD) must be made in America. This provision of H.R. 2965, as amended, affects military clothing and textiles.

The requirements of the Berry Amendment preserve the remaining American companies, the majority of which are small businesses, that comprise the industrial base available to meet DOD requirements for a broad array of military clothing and textile-based equipment. Military clothing and textiles remains among the one of the largest "business groups" within FPI. In FY 2004, it was the second largest business group. FPI is among the major suppliers to DOD, with sales larger than the next five largest suppliers, combined.

The concern is that subcontracting by FPI in the military clothing and textile market will further erode the domestic industrial base outside of Federal prisons. A recent incident confirmed these concerns regarding FPI acting as a subcontractor within the military clothing and textiles supply base. FPI urged an American company with no production facilities within the United States to bid on a DOD requirement and then subcontract 100 percent of the work to FPI. Technically, this arrangement met the requirements of the Berry Amendment. The arrangement, however, resulting in the closing of a Pennsylvania production facility of an Ohio firm who had been supplying uniforms to the Government since the Civil War. To expand work opportunities for Federal inmates, FPI's scheme diminished further the industrial base for military clothing and textiles and caused 120 experienced military clothing workers to lose their jobs, in a region in Pennsylvania where few other available job existed.

Subsection (c) makes explicit that the exercise of the authority to perform as a subcontractor or supplier on a Federal contract shall not result, either directly or indirectly, in the sale in the commercial market of a product or service resulting from the labor of federal inmate workers in violation of 18 U.S.C. 1761(a). A Federal contractor or subcontractor using FPI in performance of a Federal contract to furnish a commercial product is required to have in place management procedures to prevent introducing an inmate-produced product into the commercial market.

Subsection (d) makes explicit that the use of FPI as a subcontractor or supplier is to be a voluntary business decision of the Federal prime contractor or subcontractor. It explicitly prohibits imposing on a Federal prime contractor or subcontractor, directly or indirectly, by solicitation requirements, contract modifications, or other means, a requirement to make use of FPI, or its products or services in the performance of the Government contract.

#### *Sec. 6. Inmate Wages and Deductions*

This section adds a new paragraph (12) to Section 4122(b) of Title 18, United States Code. New Section 4122(b)(12)(A) provides explicit statutory authority for the FPI Board of Directors to prescribe the rates of hourly wages to be paid inmates with FPI work assignments. Similarly, it makes explicit the authority of the Director of the Federal Bureau of Prisons to specify the hourly wages for inmates with institutional and other work assignments other than with FPI.

New Section 4122(b)(12)(A) also requires that inmates with work assignments in FPI be paid at the rate of \$2.50 per hour during the inmate's final 24 months of incarceration. This provision was added to the bill during the House consideration of H.R. 1829 (108th Cong.) by an amendment offered by Rep. Maxine Waters (CA-35), which was combined with a related amendment offered by Rep. Juanita Millender-McDonald (CA-37).

New Section 4122(b)(12)(B) requires that the wage rates for inmates with work assignments in FPI be reviewed and considered for increase on not less than a biannual basis.

New Section 4122(b)(12)(C) requires the FPI Board of Directors to increase, by September 30, 2008, the maximum wage payable to an inmate with a work assignment in FPI to 50 percent of the Federal Minimum Wage, and to increase that maximum wage to 100 percent of the Federal Minimum Wage by September 30, 2013. The purpose in increasing the maximum FPI inmate wage is to motivate the inmate work to be a quality performer, just as higher wages are designed to motivate workers in non-correctional work environments.

New Section 4122(b)(12)(D) requires that inmate wages be paid in the name of the inmate and establishes a statutory priority for deductions that are to be taken from wages earned. Enhanced priority is given to deductions taken for the payment of restitution to the victims of the inmate's crime. An increased allocation rate for this purpose is specified in furtherance of the concepts of restorative justice.

The provision also grants explicit statutory authority to establish a savings account, often referred to as a "gate fund", payable to the inmate upon release. Finally, the provision also contemplates that

the inmate may have deductions from wages taken for the purpose of maintaining contact with the inmate's family during the term of incarceration. Travel and even telephone costs can be substantial, especially if the inmate is incarcerated a long distance from where the inmate's family resides.

*Sec. 7. Clarifying Amendment Relating to Services*

Subsection (a) of this section makes it explicit that the statutory prohibition on the sale of the results of inmate labor in interstate commerce or foreign commerce, codified at 18 U.S.C. 1761(a), applies equally to services as well as products. For 65 years, this statute was consistently interpreted to prohibit the commercial sale of the results of inmate labor, including both products and services. Section 1761(a) does not include the word "service", which is not surprising given that a broad service economy did not exist at the time of enactment in the 1930s. However, it seems implausible that a provision, enacted during the Great Depression, to protect workers against unfair competition from low-cost prison labor would have been consciously intended to afford no protection to workers providing services in the commercial market.

A statutory exception to the broad statutory prohibition was provided in 1979 when Congress established the Prison Industry Enhancement (PIE) Program, codified at 18 U.S.C. 1761(c). Under the PIE Program, a state and local prison industry program may be authorized to sell prison-made products and inmate-furnished services, after receiving approval, commonly referred to as "certification," from the Bureau of Justice Assistance within the Department of Justice (DOJ), for each individual PIE project.

FPI sought and obtained a new interpretation of 18 U.S.C. 1761(a) in February 1998. Reversing more than 65 years of practice, it found no statutory prohibition on the commercial sale of inmate-furnished services. It is important to note that the new interpretation did not come in the usual form of a legal opinion from DOJ's Office of Legal Counsel. Rather, it was made in the form of a legal memorandum from a special counsel in the Office of Enforcement Operations in DOJ's Criminal Division, which provides legal services to FPI and its parent, the Federal Bureau of Prisons.

This interpretation provided FPI, and the prison industries of the States and their local governments, authority to sell inmate-furnished services in the commercial market, either directly or in partnerships with private sector firms, without meeting the standards for PIE certification. Among the restrictions associated with the PIE Program, that could now be bypassed, was the prohibition against displacement of non-inmate workers to provide jobs for inmate workers. Similarly, there would no longer be any requirement to pay inmate workers providing services to the commercial market at rates comparable to wages being paid non-inmate workers of private firms providing the same types of services. Without the protection of a comparable wage requirement, with a floor of the Minimum Wage set pursuant to the Fair Labor Standards Act, private sector firms using non-inmate workers who are paid at market driven wages faced unfair competition from firms using inmate workers who are paid inmate wages.

Subsection (b) of this section provides a "grandfathering" provision, to provide relief to State prison industry programs that rea-

sonably relied upon the new interpretation of 18 U.S.C. 1761(a) by DOJ and began offering inmate-furnished services to the commercial market, either directly or in partnership with a private firm. First, the provision permits the completion of an agreement between a private sector firm and a state or local prison industry program, for whatever term of years is specified in their agreement as of October 1, 2004. Similarly, it permits a state program making direct sales to continue until September 30, 2008, after which the activity can only be operated pursuant to a PIE Program certification.

Subsection (d) of this section permits the completion of any agreement, in effect on the date of enactment, between a private for-profit business and FPI under which Federal inmates are furnishing services which are being introduced into the commercial market.

Subsection (e) of this section further amends Section 1761 by adding a new subsection. This subsection would explicitly permit the recovered scrap, which is recovered by certain recycling programs operated by state or local departments of correction, to be sold in the commercial market. BIFMA, the Business and Institutional Furniture Manufacturers Association, has a program with the Michigan Department of Corrections in which inmates disassemble, scrap, and recycle office furniture products for landfill avoidance. BIFMA is seeking to foster similar programs in other States. This provision will help with that effort.

The Committee believes that recycling programs such as those operated by Federal Prison Industries can simultaneously teach marketable skills to Federal inmates and provide the environmentally desired outcome of reducing the disposal in landfills of hazardous materials. Nothing in H.R. 2965, as amended, is intended to restrict the continuation of FPI's recycling activities for Federal agencies. Subsection (e) guarantees that any inmate work program operated by a State or local jurisdiction of a State may continue to provide inmate labor to furnish services for sale in the commercial market, if such program has obtained certification pursuant to the PIE Program.

#### *Sec. 8. Conforming Amendment*

This section provides FPI with explicit statutory authority to offer services to the various Federal departments and agencies. Presently, FPI's authorizing statute only specifically addresses the sale of products.

#### *Sec. 9. Rules of Construction Relating to Chapter 307*

This section adds a new Section 4130 to Chapter 307 (Employment, Prisons and Prisoners), which establishes a series of rules of construction for such chapter. First, it would make it clear that no inmate has a right to a work assignment with FPI or the payment of any particular wage, except as provided by law or regulation. Next, the provision makes explicit that no inmate worker has the status of an employee for the purposes of any law or regulation. Finally, the new section 18 U.S.C. 4130 makes explicit that nothing in Chapter 307 establishes any cause of action against the United States by or on behalf of any inmate.

*Sec. 10. Providing Additional Rehabilitative Opportunities for Inmates*

Subsection (a)(1) of this section reflects the important Enhanced in-Prison Educational and Vocational Assessment and Training Program for Federal inmates, which were added by an amendment offered by Rep. Conyers of Michigan and Rep. Frank of Massachusetts during the Committee's consideration of H.R. 1577 during the 107th Congress. It affords improved inmate access to educational opportunities, both remedial and modern "hands-on" vocational programs, and other release-preparation programs, which will improve inmates prospects of making a successful return to society. This Conyers-Frank amendment began the process of modifying the bill to expand Federal inmates' access to alternative rehabilitative opportunities and alternative work opportunities.

The value of such programs in reducing recidivism has been demonstrated by a Department of Justice study. In fact, it shows that participation in such educational program reduces recidivism more than participation in prison work programs. Beginning in 1983, BOP has conducted a on-going study of the effects of vocational training and inmate work experiences on post-release success. The most recent analysis of the Post Release Employment Project (PREP) shows that work experiences have a positive effect on post-release employment success, resulting in a 24% reduction in recidivism. What is infrequently cited is that same PREP data showed that vocational and remedial education programs have even a more positive effect on reducing recidivism, resulting in a 33 percent reduction in recidivism.

H.R. 2965, tries to provide more opportunities that are better able to reduce recidivism.

Subsection (a)(2) requires a comprehensive program encompassing all of the following: (i) in-prison assessments of an inmates needs and aptitudes; (ii) a broad range of educational opportunities; (iii) vocational and apprenticeship training; and (iv) comprehensive release-readiness preparation. Subsection (a)(3) authorizes \$75 million per fiscal year to administer the program. It expresses a sense of Congress that FPI should also use profits toward the support of such programs.

Section 10 of the Sensenbrenner-Conyers amendment in the nature of a substitute to H.R. 2965, as introduced, was further amended by adding a new subsection (a)(4), which was added by an amendment offered by Rep. Maxine Waters (CA-35). New Section 10(a)(4) expresses a sense of the Congress that in promulgating the rate for a special inmate training wage under section 14(a) of the Fair Labor Standards Act, pursuant to paragraph (a)(1), the Secretary of Labor should promulgate such special inmate training wage at a rate that is not less than 50 percent of the minimum wage required by section 6(a) of such Act.

Subsection (b)(1) of this section adds a new section 4124a to Chapter 307 of title 18, United States Code, authorizing a program providing additional inmate work opportunities through public service activities.

Subsection (a) of new Section 4124a authorizes inmates with assignments within the prisons to perform work in support of the public service activities of non-profit organizations, including reli-

gious organizations, and units of local government and special purpose districts of such governments, such as school districts.

The program is based upon a program currently being conducted by the Ohio Department of Corrections. An assessment of that program conducted by the Enterprise Prison Institute showed that the Ohio Department of Corrections was able to double its inmate work opportunities through such a program. The Enterprise Prison Institute is a group dedicated to bringing alternative work opportunities to Federal, State, and local correctional systems through partnerships with private-sector companies. The Institute's Board Chairman is former Attorney General Edwin Meese.

Subsection (b) of new Section 4124a specifies the types of entities eligible to make use of the labor of Federal inmates in furtherance of their public service activities.

Subsection (c) of new Section 4124a creates the new position of the Inmate Work Training Administrator. The function of this new position is to identify alternative inmate work opportunities by facilitating the types of programs authorized by new Section 4124a and by new Section 4124b of title 18, United States Code, which is subsequently added by Section 11 of the bill. At the request of the Department of Justice, the FPI's Chief Executive Officer will designate the Inmate Work Training Administrator, with the approval of the FPI Board of Directors. FPI's Chief Operating Officer will provide day-to-day supervision of the Inmate Work Training Administrator.

H.R. 2965, as introduced, contemplated much greater autonomy for the Inmate Work Training Administrator. Such autonomy was strongly recommended by the Enterprise Prison Institute. By giving the Administrator the authority derived from direct appointment by the FPI Board of Directors and working with, rather than for, FPI's Chief Operating Officer, the Enterprise Prison Project believed that the selected Inmate Work Training Administrator would be better equipped and more motivated to pursue, with greater entrepreneurial spirit, the contemplated alternative inmate work opportunities. Today, the FPI Program is essentially managed at all levels by individuals drawn from the ranks of correctional officers, too frequently lacking any business background.

Subsection (d) of new Section 4124a prescribes the matters that must be addressed a proposed agreement to conduct an alternative inmate work program under the new authority. Subsection (e) of new Section 4124a prescribes the representations that must accompany any proposed agreement. The representations are in the form of written certifications from the chief executive officer of the entity that will be making use of the inmate workers.

Subsection (e)(1) of new Section 4124 relates to representations regarding the type of work the inmates will be performing for the non-profit organization, local government or special purpose district. The work must be limited to providing direct support to the public service activities of the entity. The subsection specifically prohibits inmates from performing work for a for-profit business subsidiary of a non-profit organization, since this would likely result in the introduction of inmate-furnished services into the commercial market. It is specifically contemplated that inmates would do work, such as refurbishing items donated to a non-profit organization, for example, furniture or automobiles, which the non-profit

organization would then sell to raise funds to support its public service activities. With respect to the two cited examples, inmates could learn skills that would strongly enhance their prospects for post-release employment, if such work for a non-profit organization were coupled with a structured apprenticeship-like training program.

A broad array of alternative inmate work opportunities similarly exist with units of local government or their special purpose districts, such as school districts. Inmates can be used to fabricate training aids or displays, which now divert teachers from their primary instructional functions. Similar opportunities exist with local government entities such as police, fire, and EMS organizations.

Subsection (e)(2) of new Section 4124a explicitly prohibits the displacement of non-inmate workers of the non-profit organization, local government, or special purpose district. At the suggestion of American Federation of State, County, and Municipal Employees (AFSCME), the provision against displacement was modified to provide protection to individuals performing work for a local government under the work requirements of TANF, who may not have the status of being an "employee."

Subsection (f) of new Section 4124a requires that each proposed agreement presented to the FPI Board of Directors be subject to a public comment process comparable to that required when the Board is considering a proposal to permit FPI to expand its sales of products or services to Federal agencies. The subsection also specifies the issues to be considered by the Board in evaluating a proposed agreement and states the circumstances under which a proposed agreement cannot be approved.

Subsection (g) of new Section 4124a specifies the wages to be paid to participating Federal inmates and the deductions that may be taken from those wages. It also requires that each participating inmate confirm in writing that he or she is participating voluntarily and she understands the wages to be paid and the deductions to be taken from those wages.

Subsection (h) of new Section 4124a makes explicit the application of the Bureau of Prisons Program Statement Number 1040.10 (Non-Discrimination Toward Inmates) with respect to any agreement pursuant to new Section 4124a or new Section 4124b of title 18, United States Code, which is subsequently added by Section 11 of the bill.

Subsection (i) of new Section 4124a specifies the enforceable protections provided to non-inmate workers with respect to any agreement pursuant to new Section 4124a or new Section 4124b of title 18, United States Code, which is subsequently added by Section 11 of the bill.

Subsection (i)(1) of new Section 4124a permits any interested party to request verification by the Secretary of Labor that a proposed agreement will not result in the displacement of non-inmate workers. Both the Secretary of Labor and the interested party may suggest modifications to the Board to effect any needed corrective modification to the proposed agreement.

Subsection (i)(2) of new Section 4124a empowers the Secretary of Labor, upon her own initiative or upon request, to determine if the actual performance of any approved agreement is resulting in the displacement of non-inmate workers or permitting participating in-

mates to be performing unauthorized work activities. The subsection provides to the Secretary of Labor an array of sanctions that can be applied if the Secretary finds such displacement of non-inmate workers or unauthorized work activity by the participating Federal inmates.

Subsection (c) requires the development of an action plan and implementation schedule for having Federal Prison Industries donate products and services to non-profit organizations that assist low-income individuals, who would likely be unable to purchase such products or services in the commercial market. The provision authorizes the appropriation of \$7 million in each of fiscal years 2008 through 2012 for the purposes of paying inmate wages and otherwise administering the program.

Subsection (d) authorizes a “Cognitive Abilities Assessment Demonstration Program” within the Federal Bureau of Prisons. Use of such assessment techniques in the special adult education setting have shown important results in matching education and training programs with the needs of the individual. Some limited application to the local government correctional setting warrants authorization of the three-year demonstration program proposed by the bill.

Subsection (3) requires the establishment of Pre-Release Employment Assistance program, first added to H.R. 1577 at the suggestion of the AFL–CIO. Priority for participation is accorded to inmates in the final 24 months of incarceration.

*Sec 11. Re-entry employment preparation through work-based training and apprenticeship*

Subsection (a) of this section adds a new section 4124b to Chapter 307 of title 18, United States Code, authorizing a Work-based Employment Preparation Program for Federal inmates.

Subsection (a) of new Section 4124b authorizes a private for-profit business to sponsor a Work-based Employment Preparation Program for Federal Inmates. In contrast to FPI, such businesses will be able to expose participating inmates to work situations more akin to that the inmates will find upon release. The byproducts of the program are authorized by another provision to be sold in the commercial market. Inmates participating in the Program must be paid wages at a rate not less than an inmate training wage promulgated by the Secretary of Labor pursuant to Section 14(a) of the Fair Labor Standards Act. Such inmate training wage will be less than the Federal Minimum Wage. In the past, special wages promulgated pursuant to Section 14(a) have typically been around 50 percent of the Federal Minimum Wage.

Subsection (b) of new Section 4124b limits the subject matter of the Work-based Employment Preparation Program to products or services that are no long produced or furnished within the United States by non-inmate workers. This limitation avoids subjecting other private sector businesses, with employees being paid market-driven wages, from unfair competition in the commercial market by products produced or services furnished by inmates participating in the program being paid an Inmate Training Wage.

The Committee has been informed by the Department of Justice that it is the practice of other countries with whom the United States trades to permit, under various terms and conditions, the in-

roduction into those countries's commercial markets of products and services produced or performed by prison inmates in those countries. The Committee believes that H.R. 2965, as amended, would authorize a practice within the United States that is consistent with existing laws and treaties, and the practices of our trading partners, as described by the Department of Justice.

Subsection (c) of new Section 4124b specifies the requirements of an acceptable proposal to conduct a Work-based Employment Preparation Program. Subsection (c)(1) requires the program afford participating inmates apprenticeship training, or its functional equivalent. The objective is to combine hands-on work experience with a conceptual understanding of the work being performed.

Subsection (c)(2) requires the for-profit business sponsoring the program to furnish each participating inmate who successfully completes the program with a certificate memorializing such successful completion. The firm must commit to furnishing copies of such documents to the participant for 24 months after release. A reference from a business will be substantially more valuable than one issued by FPI. This provision also requires that an inmate successfully completing a program be provided, at the time of release, all of the documents, including a State government-issued photo identification card that a person would be required to present to a prospective employer in order to complete an Employment Eligibility Verification (ICE Form I-9).

Subsection (d) of new Section 4124b requires that an inmate participating in a Work-based Employment Preparation Program be paid not less than the inmate training wage to be promulgated by the Secretary of Labor. The provision directs the FPI Board of Directors to request the Secretary of Labor to request the promulgation of such an inmate training wage.

Subsection (e) of new Section 4124b allocates funding received from the firm participating in the program to support remedial, vocational, and other release preparation program for non-participating inmates.

Subsection (f) of new Section 4124b specifies issues that the Board of Directors shall consider in evaluating proposals from a private for-profit applying to sponsor a Work-based Employment Preparation Program.

Subsection (g) of new Section 4124b specifies the duration of the Work-based Employment Preparation Program. No proposed Program agreement may be approved by the FPI Board of Directors after September 30, 2016. Performance under all program agreements must be concluded prior to October 1, 2021.

Subsection (b) of this section imposes certain review and reporting requirement on the Attorney General regarding the Departments implementation of the alternative inmate work opportunities provided by new section 4124a and section 4124b.

Subsection (c) of this section provides for long-term monitoring of the implementation of the Work-based Employment Training Program by the Government Accountability Office (GAO). The subsection specifies the matters to be assessed and directs the Comptroller General to seek public comment on the scope and methodology he intends to use to conduct the assessment. Additionally, it provides a schedule for the submission of an interim and a final report to the Congress.

Subsection (d) makes a further amendment to Section 1761 of Title 18, United States Code, to permit the commercial sale of the byproducts of the Work-based Employment Preparation Program established in Subsection (a).

*Sec. 12. Restructuring the Board of Directors*

This section fundamentally restructures FPI's governing Board of Directors. It replaces the current 6 member Board, unchanged since 1934, with an eleven member Board. The Board's members would continue to be appointed by the President, but would not be subject to Senate confirmation.

Currently, the six-member Board has two public members and four private sector members. One of the public members represents the Attorney General and the other represents the Secretary of Defense. Of the four private sector members, one represents "industry," one represents "labor," one represents "agriculture" (although FPI does not sell agricultural products); and one represents "retailers and consumers" (although FPI is not authorized to sell products or services in the commercial market).

Under this section, the new 11-member Board would be comprised of three members representing business, three members representing labor, one member with special expertise in inmate rehabilitation techniques, one member representing victims of crime, one member representing inmate workers, and two additional members "whose background and expertise the President deems appropriate."

The provision establishes procedures for the initial appointment of each of the eleven members, with staggered terms, and provides authority regarding their reappointment. It also provides for the filling of any Board vacancies that may occur. The section empowers the President to designate a Chairperson, who in turn is empowered to designate the Vice Chairperson.

To provide the Board with needed staff support, in addition to the staff of the corporation, the provision authorizes the Chairperson to procure temporary and intermittent personal services and to utilize Federal detailees on a non-reimbursable basis.

The provision recognizes the Director of the Bureau of Prisons as the Chief Executive Officer of the corporation, and empowers the Director to designate a person as the Chief Operating Officer of the corporation. The Chief Operating Officer need not necessarily be the incumbent Assistant Director of the Federal Bureau of Prisons for Industries, Education, and Vocational Training, which has been the past practice.

*Sec. 13. Providing additional management flexibility to Federal Prison Industries operations*

This section makes explicit FPI's authority to locate more than one factory (workshop) at a single Federal correctional institution. It also provides statutory authority for FPI to operate a factory (workshop) outside of a correctional institution if all of its inmate workers are classified as minimum security inmates.

*Sec. 14. Transitional personnel management authority*

This section provides some relief to correctional officers and other staff whose salaries are paid from the revenues of the corporation

and who might be separated from service due to a reduction in the income derived from FPI activities. Such reductions may arise if there is an unexpectedly rapid shift to alternative rehabilitative work opportunities with non-profit entities, which may maintain inmate work opportunities but result in reduced corporate income. Under the provision, such correctional officers and other staff would be eligible for appointment or reappointment in the competitive services and given priority for placement for available positions within the Federal Bureau of Prisons through a priority placement list.

*Sec. 15. Federal Prison Industries report to Congress*

This section amends Section 4127 of title 18, United States Code, to enhance the existing requirement for FPI's Annual Report to the Congress. It adds specificity to the information required to be reported regarding FPI sales of products and services and FPI's resulting share of the total Federal Government market. For the first time, it requires FPI to report some data regarding the inmates in rehabilitative work opportunities with FPI and their post-release employment. Finally, the provision seeks to maintain the guarantee of public access to the annual report.

*Sec. 16. Definitions*

This section amends Chapter 307 of title 18, United States Code, by adding a new Section 4130 specifying definitions for key terms used in Sections 4122 and 4124.

Paragraph (1) of Section 4130 adds a definition of the term "assembly" derived from Department of Labor regulations implementing the Walsh-Healey Public Contracts Act (41 U.S.C. 35).

Paragraph (2) of Section 4130 adds a definition of the term "current market price". The definition equates the term "current market price" to the term "fair market price" as defined in the Small Business Act (15 U.S.C. 644(a)), which is the standard that must be met by small businesses selling to the Government.

Paragraph (3) of Section 4130 adds a definition of the term "import-sensitive product" derived from a standard used by the Office of the United States Trade Representative.

Paragraph (4) of Section 4130 adds a definition of the term "labor-intensive manufacture" derived from a standard used by the Bureau of Economic Analysis at the Department of Commerce.

Paragraph (5) of Section 4130 adds a definition of the term "manufacture" derived from Department of Labor regulations implementing the Walsh-Healey Public Contracts Act (41 U.S.C. 35).

Paragraph (7) of Section 4130 adds a definition of the term "reasonable share of the market". FPI's share of the Federal market for a specific product would be recognized as a "reasonable share of the market", if FPI's share of the total Federal purchases for a specific product, averaged over a three-year period, does not exceed 20 percent. It should be noted that new Section 4122(b)(10)(C), added by Section 3 of the H.R. 1829, provides the FPI Board of Directors with limited authority to approve, on a case-by-case basis, a proposed FPI expansion that would result in FPI sales in excess of the percentages specified.

Paragraph (8) of Section 4130 adds a definition of the term “services” through a cross-reference to the Government-wide Federal Acquisition Regulation (FAR).

*Sec. 17. Implementation regulations and procedures*

Subsection (a) of this section requires regulatory implementation through the Government-wide Federal Acquisition Regulation (FAR), specifying a schedule for the publication of proposed and final regulations and their effective date. The provision provides for 60 days for public comment on the proposed regulations, which was the standard set in Section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b).

Subsection (b) directs the FPI Board of Directors to use notice and comment rulemaking conducted pursuant to the Administrative Procedure Act (APA), to issue definitions relating to four terms: (a) “prison-made product;” (b) “prison-furnished service;” (c) “specific product;” and “specific service.” The public is accorded 60 days to comment on the Board’s proposals.

Subsection (b)(4)(C) also set forth a provision regarding the manner in which the Board operates by requiring that Board act on the basis of deliberations and a recorded vote conducted during a public meeting, unless the meeting is closed pursuant to the standards of the APA. This requirement applies to the full range of regulations, procedures, and guidelines relating to the governance of the corporation.

Subsection (c) of this section specifies the timetable for various actions by the Secretary of Labor in promulgating a special inmate training wage under the authority of Section 14(a) of the Fair Labor Standards Act, and related matters.

Subsection (c)(1) directs the Secretary of Labor, in consultation with the Attorney General, to promulgate an “inmate training wage” under the authority of Section 14(a) of the Fair Labor Standards Act, upon receipt of a request by the FPI Board of Directors to issue such wages. It prescribes deadlines for each step in the regulatory process and provides a sense of Congress that such wage should be not less than 50% of the minimum wage issued pursuant to the Fair Labor Standards Act.

Subsection (c)(2) authorizes the FPI Board of Directors to issue an interim inmate training wage in the event that the Secretary of Labor fails to issue an interim inmate training wage by the deadline specified in paragraph (1). The interim inmate training wage issued by the Board may not be less than 50 percent of the Federal Minimum Wage.

Subsection (c)(3) provides that the interim inmate training wage issued by the FPI Board of Directors or the Secretary of Labor remains valid until the effective date of the final inmate training wage promulgated by the Secretary. Section (c)(3)(B) permits a firm conducting a Work-based Employment Preparation Program to continue paying the wages specified in the agreement for the duration of the agreement, if those wages are not less than the interim inmate training wage issued by the FPI Board of Directors or the Secretary of Labor.

Subsection (c)(4) permits a for-profit business that has an agreement with FPI in effect on the date of enactment of the Act, under which Federal inmates are furnishing services that are being intro-

duced into the commercial market, to continue to pay inmates at wage rates specified in the agreement for the duration of the agreement.

*Sec. 18. Rule of construction*

This section sets forth a rule of construction relating to Section 4124(e)(2), added by Section 2 of the bill. New Section 4124(e)(2) specifies FPI's right to appeal an adverse decision by an agency contracting officer regarding an agency decision not to make a contract award to FPI. This provision applies exclusively to FPI. There is no intention to alter the existing bid protest processes available to private sector vendors with the agency making the purchase, before the Government Accountability Office, or within the Federal courts.

*Sec. 19. Effective date and applicability*

This section establishes the effective dates for the various provisions of the "Federal Prison Industries Competition in Contracting Act of 2006".

*Sec. 20. Clerical amendments*

This section makes clerical amendments to the table of sections for chapter 307 of title 18, United States Code.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**TITLE 18, UNITED STATES CODE**

\* \* \* \* \*

**PART I—CRIMES**

\* \* \* \* \*

**CHAPTER 85—PRISON-MADE GOODS**

\* \* \* \* \*

**§ 1761. Transportation or importation**

(a) Whoever knowingly transports in interstate commerce or from any foreign country into the United States any [goods, wares, or merchandise manufactured, produced, or mined] *products manufactured, services furnished, or minerals mined*, wholly or in part by convicts or prisoners, except convicts or prisoners on parole, supervised release, or probation, or in any penal or reformatory institution, shall be fined under this title or imprisoned not more than two years, or both.

\* \* \* \* \*

(c) In addition to the exceptions set forth in subsection (b) of this section, this chapter shall not apply to [goods, wares, or merchan-

dise manufactured, produced, or mined] *products manufactured, services furnished, or minerals mined* by convicts or prisoners who—

(1) \* \* \*

\* \* \* \* \*

(d) *This section shall not apply to services performed as part of an inmate work program conducted by a State or local government to disassemble, scrap, and recycle products, other than electronic products, that would otherwise be disposed of in a landfill. Recovered scrap from such program may be sold.*

(e) *This section shall not apply to products produced or services furnished with inmate labor incidental to the work-based training program authorized pursuant to section 4124b of this title.*

[(d)] (f) For the purposes of this section, the term “State” means a State of the United States and any commonwealth, territory, or possession of the United States.

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### PART III—PRISONS AND PRISONERS

\* \* \* \* \*

#### CHAPTER 307—EMPLOYMENT

Sec.

[4121. Federal Prison Industries; board of directors.]

4121. *Federal Prison Industries; Board of Directors: executive management.*

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[4124. Purchase of prison-made products by Federal departments.]

4124. *Governmentwide procurement policy relating to purchases from Federal Prison Industries.*

4124a. *Additional inmate work opportunities through public service activities.*

4124b. *Re-entry employment preparation through work-based training and apprenticeship.*

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[4127. Prison Industries report to Congress.]

4127. *Federal Prison Industries report to Congress.*

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4130. *Construction of provisions.*

4131. *Definitions.*

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#### [§ 4121. Federal Prison Industries; board of directors

["Federal Prison Industries", a government corporation of the District of Columbia, shall be administered by a board of six directors, appointed by the President to serve at the will of the President without compensation.

[The directors shall be representatives of (1) industry, (2) labor, (3) agriculture, (4) retailers and consumers, (5) the Secretary of Defense, and (6) the Attorney General, respectively.]

#### § 4121. *Federal Prison Industries; Board of Directors: executive management*

(a) *Federal Prison Industries is a government corporation of the District of Columbia organized to carry on such industrial operations in Federal correctional institutions as authorized by its*

*Board of Directors. The manner and extent to which such industrial operations are carried on in the various Federal correctional institutions shall be determined by the Attorney General.*

*(b)(1) The corporation shall be governed by a board of 11 directors appointed by the President.*

*(2) In making appointments to the Board, the President shall assure that 3 members represent the business community, 3 members represent organized labor, 1 member shall have special expertise in inmate rehabilitation techniques, 1 member represents victims of crime, 1 member represents the interests of Federal inmate workers, and 2 additional members whose background and expertise the President deems appropriate. The members of the Board representing the business community shall include, to the maximum extent practicable, representation of firms furnishing services as well as firms producing products, especially from those industry categories from which Federal Prison Industries derives substantial sales. The members of the Board representing organized labor shall, to the maximum practicable, include representation from labor unions whose members are likely to be most affected by the sales of Federal Prison Industries.*

*(3) Each member shall be appointed for a term of 5 years, except that of members first appointed—*

*(A) 2 members representing the business community shall be appointed for a term of 3 years;*

*(B) 2 members representing labor shall be appointed for a term of 3 years;*

*(C) 2 members whose background and expertise the President deems appropriate for a term of 3 years;*

*(D) 1 member representing victims of crime shall be appointed for a term of 3 years;*

*(E) 1 member representing the interests of Federal inmate workers shall be appointed for a term of 3 years;*

*(F) 1 member representing the business community shall be appointed for a term of 4 years;*

*(G) 1 member representing the business community shall be appointed for a term of 4 years; and*

*(H) the members having special expertise in inmate rehabilitation techniques shall be appointed for a term of 5 years.*

*(4) The President shall designate 1 member of the Board as Chairperson. The Chairperson may designate a Vice Chairperson.*

*(5) Members of the Board may be reappointed.*

*(6) Any vacancy on the Board shall be filled in the same manner as the original appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of that term.*

*(7) The members of the Board shall serve without compensation. The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, to attend meetings of the Board and, with the advance approval of the Chairperson of the Board, while otherwise away from their homes or regular places of business for purposes of duties as a member of the Board.*

(8)(A) *The Chairperson of the Board may appoint and terminate any personnel that may be necessary to enable the Board to perform its duties.*

(B) *Upon request of the Chairperson of the Board, a Federal agency may detail a Federal Government employee to the Board without reimbursement. Such detail shall be without interruption or loss of civil service status or privilege.*

(9) *The Chairperson of the Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.*

(c) *The Director of the Bureau of Prisons shall serve as Chief Executive Officer of the Corporation. The Director shall designate a person to serve as Chief Operating Officer of the Corporation.*

**§ 4122. Administration of Federal Prison Industries**

(a) Federal Prison Industries shall determine in what manner and to what extent industrial operations shall be carried on in Federal penal and correctional institutions for the **production of commodities** *production of products or furnishing of services* for consumption in such institutions or for sale to the departments or agencies of the United States, but not for sale to the public in competition with private enterprise.

(b)(1) \* \* \*

\* \* \* \* \*

(3)(A) Federal Prison Industries shall diversify its products so that its sales are distributed among its industries as broadly as possible.

(B) *Federal Prison Industries may locate more than one workshop at a Federal correctional facility.*

(C) *Federal Prison Industries may operate a workshop outside of a correctional facility if all of the inmates working in such workshop are classified as minimum security inmates.*

[(4) Any decision by Federal Prison Industries to produce a new product or to significantly expand the production of an existing product shall be made by the board of directors of the corporation. Before the board of directors makes a final decision, the corporation shall do the following:

[(A) The corporation shall prepare a detailed written analysis of the probable impact on industry and free labor of the plans for new production or expanded production. In such written analysis the corporation shall, at a minimum, identify and consider—

[(i) the number of vendors currently meeting the requirements of the Federal Government for the product;

[(ii) the proportion of the Federal Government market for the product currently served by small businesses, small disadvantaged businesses, or businesses operating in labor surplus areas;

[(iii) the size of the Federal Government and non-Federal Government markets for the product;

[(iv) the projected growth in the Federal Government demand for the product; and

[(v) the projected ability of the Federal Government market to sustain both Federal Prison Industries and private vendors.

[(B) The corporation shall announce in a publication designed to most effectively provide notice to potentially affected private vendors the plans to produce any new product or to significantly expand production of an existing product. The announcement shall also indicate that the analysis prepared under subparagraph (A) is available through the corporation and shall invite comments from private industry regarding the new production or expanded production.]

[(C) The corporation shall directly advise those affected trade associations that the corporation can reasonably identify the plans for new production or expanded production, and the corporation shall invite such trade associations to submit comments on those plans.]

[(D) The corporation shall provide to the board of directors—

[(i) the analysis prepared under subparagraph (A) on the proposal to produce a new product or to significantly expand the production of an existing product,

[(ii) comments submitted to the corporation on the proposal, and

[(iii) the corporation's recommendations for action on the proposal in light of such comments.]

In addition, the board of directors, before making a final decision under this paragraph on a proposal, shall, upon the request of an established trade association or other interested representatives of private industry, provide a reasonable opportunity to such trade association or other representatives to present comments directly to the board of directors on the proposal.

[(5) Federal Prison Industries shall publish in the manner specified in paragraph (4)(B) the final decision of the board with respect to the production of a new product or the significant expansion of the production of an existing product.]

*(4)(A) Federal Prison Industries is authorized to offer a new specific product or furnish a new specific service in response to a competitive solicitation or other purchase request issued by a Federal department or agency. No subsequent offering of such product or service may be made by Federal Prison Industries until the board of directors has approved the offering for sale of such new specific product or new specific service, in conformance with the requirements of paragraphs (5) through (9).*

*(B) Federal Prison Industries may produce a product or furnish a service in excess of the authorized level of production for such product or service, in response to an order placed pursuant to an existing contract with a Federal department or agency, if the agency's need for the product or service is of such an urgency that it would justify the use of procedures other than competitive procedures pursuant to section 2304(c)(2) of title 10 or section 303(c)(2) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(2)), as may be applicable.*

*(5) A decision to authorize Federal Prison Industries to offer a new specific product or specific service or to expand the production of an existing product or service for sale to the Federal Government shall be made by its board of directors in conformance with the requirements of subsections (b), (c), (d), and (e) of section 553 of title 5, and this chapter.*

(6)(A) *Whenever Federal Prison Industries proposes to offer for sale a new specific product or specific service or to expand production of a currently authorized product or service, the Chief Operating Officer of Federal Prison Industries shall submit an appropriate proposal to the board of directors and obtain the board's approval before initiating any such expansion. The proposal submitted to the board shall include a detailed analysis of the probable impact of the proposed expansion of sales within the Federal market by Federal Prison Industries on private sector firms and their non-inmate workers.*

(B)(i) *The analysis required by subparagraph (A) shall be performed by an interagency team on a reimbursable basis or by a private contractor paid by Federal Prison Industries.*

(ii) *If the analysis is to be performed by an interagency team, such team shall be led by the Administrator of the Small Business Administration or the designee of such officer with representatives of the Department of Labor, the Department of Commerce, and the Federal Procurement Data Center.*

(iii) *If the analysis is to be performed by a private contractor, the selection of the contractor and the administration of the contract shall be conducted by one of the entities referenced in clause (ii) as an independent executive agent for the board of directors. Maximum consideration shall be given to any proposed statement of work furnished by the Chief Operating Officer of Federal Prison Industries.*

(C) *The analysis required by subparagraph (A) shall identify and consider—*

(i) *the number of vendors that currently meet the requirements of the Federal Government for the specific product or specific service;*

(ii) *the proportion of the Federal Government market for the specific product or specific service currently furnished by small businesses during the previous 3 fiscal years;*

(iii) *the share of the Federal market for the specific product or specific service projected for Federal Prison Industries for the fiscal year in which production or performance will commence or expand and the subsequent 4 fiscal years;*

(iv) *whether the industry producing the specific product or specific service in the private sector—*

(I) *has an unemployment rate higher than the national average; or*

(II) *has a rate of unemployment for workers that has consistently shown an increase during the previous 5 years;*

(v) *whether the specific product is an import-sensitive product;*

(vi) *the requirements of the Federal Government and the demands of entities other than the Federal Government for the specific product or service during the previous 3 fiscal years;*

(vii) *the projected growth or decline in the demand of the Federal Government for the specific product or specific service;*

(viii) *the capability of the projected demand of the Federal Government for the specific product or service to sustain both Federal Prison Industries and private vendors; and*

(ix) *whether authorizing the production of the new product or performance of a new service will provide inmates with the maximum opportunity to acquire knowledge and skill in trades*

and occupations that will provide them with a means of earning a livelihood upon release.

(D)(i) The board of directors may not approve a proposal to authorize the production and sale of a new specific product or continued sale of a previously authorized product unless—

(I) the product to be furnished is a prison-made product; or

(II) the service to be furnished is to be performed by inmate workers.

(ii) The board of directors may not approve a proposal to authorize the production and sale of a new prison-made product or to expand production of a currently authorized product if the product is—

(I) produced in the private sector by an industry which has reflected during the previous year an unemployment rate above the national average; or

(II) an import-sensitive product.

(iii) The board of directors may not approve a proposal for inmates to provide a service in which an inmate worker has access to—

(I) personal or financial information about individual private citizens, including information relating to such person's real property, however described, without giving prior notice to such persons or class of persons to the greatest extent practicable;

(II) geographic data regarding the location of surface and subsurface infrastructure providing communications, water and electrical power distribution, pipelines for the distribution of natural gas, bulk petroleum products and other commodities, and other utilities; or

(III) data that is classified.

(iv)(I) Federal Prison Industries is prohibited from furnishing through inmate labor construction services, unless to be performed within a Federal correctional institution pursuant to the participation of an inmate in an apprenticeship or other vocational education program teaching the skills of the various building trades.

(II) For purposes of this clause, the term "construction" has the meaning given such term by section 2.101 of the Federal Acquisition Regulation (48 C.F.R. part 2.101), as in effect on June 1, 2004, including the repair, alteration, or maintenance of real property in being.

(7) To provide further opportunities for participation by interested parties, the board of directors shall—

(A) give additional notice of a proposal to authorize the production and sale of a new product or service, or expand the production of a currently authorized product or service, in a publication designed to most effectively provide notice to private vendors and labor unions representing private sector workers who could reasonably be expected to be affected by approval of the proposal, which notice shall offer to furnish copies of the analysis required by paragraph (6) and shall solicit comment on the analysis;

(B) solicit comments on the analysis required by paragraph (6) from trade associations representing vendors and labor unions representing private sector workers who could reasonably be expected to be affected by approval of the proposal to authorize the production and sale of a new product or service

(or expand the production of a currently authorized product or service); and

(C) afford an opportunity, on request, for a representative of an established trade association, labor union, or other private sector representatives to present comments on the proposal directly to the board of directors.

(8) The board of directors shall be provided copies of all comments received on the expansion proposal.

(9) Based on the comments received on the initial expansion proposal, the Chief Operating Officer of Federal Prison Industries may provide the board of directors a revised expansion proposal. If such revised proposal provides for expansion of inmate work opportunities in an industry different from that initially proposed, such revised proposal shall reflect the analysis required by paragraph (6)(C) and be subject to the public comment requirements of paragraph (7).

(10) The board of directors shall consider a proposal to authorize the sale of a new specific product or specific service (or to expand the volume of sales for a currently authorized product or service) and take any action with respect to such proposal, during a meeting that is open to the public, unless closed pursuant to section 552(b) of title 5.

(11) In conformance with the requirements of paragraph (10) of this subsection, the board of directors may—

(A) authorize the donation of products produced or services furnished by Federal industries and available for sale;

(B) authorize the production of a new specific product or the furnishing of a new specific service for donation; or

(C) authorize a proposal to expand production of a currently authorized specific product or specific service in an amount in excess of a reasonable share of the market for such product or service, if—

(i) a Federal agency or department, purchasing such product or service, has requested that Federal Prison Industries be authorized to furnish such product or service in amounts that are needed by such agency or department; or

(ii) the proposal is justified for other good cause and supported by at least two-thirds of the appointed members of the board.

(12)(A) The Board of Directors of Federal Prison Industries shall prescribe the rates of hourly wages to be paid inmates performing work for or through Federal Prison Industries. The Director of the Federal Bureau of Prisons shall prescribe the rates of hourly wages for other work assignments within the various Federal correctional institutions. In the case of an inmate whose term of imprisonment is to expire in not more than 2 years, wages shall be earned at an hourly rate of not less than \$2.50, but paid at the same rate and in the same manner as to any other inmate, and any amount earned but not paid shall be held in trust and paid only upon the actual expiration of the term of imprisonment.

(B) The various inmate wage rates shall be reviewed and considered for increase on not less than a biannual basis.

(C) The Board of Directors of Federal Prison Industries shall—

(i) not later than September 30, 2008, increase the maximum wage rate for inmates performing work for or through Federal

*Prison Industries to an amount equal to 50 percent of the minimum wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)); and*

*(ii) not later than September 30, 2013, increase such maximum wage rate to an amount equal to such minimum wage.*

*(D) Wages earned by an inmate worker shall be paid in the name of the inmate. Deductions, aggregating to not more than 80 percent of gross wages, shall be taken from the wages due for—*

*(i) applicable taxes (Federal, State, and local);*

*(ii) payment of fines and restitution pursuant to court order;*

*(iii) payment of additional restitution for victims of the inmate's crimes (at a rate not less than 10 percent of gross wages);*

*(iv) allocations for support of the inmate's family pursuant to statute, court order, or agreement with the inmate;*

*(v) allocations to a fund in the inmate's name to facilitate such inmate's assimilation back into society, payable at the conclusion of incarceration; and*

*(vi) such other deductions as may be specified by the Director of the Bureau of Prisons.*

*(E) Each inmate worker working for Federal Prison Industries shall indicate in writing that such person—*

*(i) is participating voluntarily; and*

*(ii) understands and agrees to the wages to be paid and deductions to be taken from such wages.*

**[(6)]** (13) Federal Prison Industries shall publish, after the end of each 6-month period, a list of sales by the corporation for that 6-month period. Such list shall be made available to all interested parties.

\* \* \* \* \*

#### **[(§)4124. Purchase of prison-made products by Federal departments]**

**[(a)]** The several Federal departments and agencies and all other Government institutions of the United States shall purchase at not to exceed current market prices, such products of the industries authorized by this chapter as meet their requirements and may be available.

**[(b)]** Disputes as to the price, quality, character, or suitability of such products shall be arbitrated by a board consisting of the Attorney General, the Administrator of General Services, and the President, or their representatives. Their decision shall be final and binding upon all parties.

**[(c)]** Each Federal department, agency, and institution subject to the requirements of subsection (a) shall separately report acquisitions of products and services from Federal Prison Industries to the Federal Procurement Data System (as referred to in section 6(d)(4) of the Office of Federal Procurement Policy Act) in the same manner as it reports other acquisitions. Each report published by the Federal Procurement Data System that contains the information collected by the System shall include a statement to accompany the information reported by the department, agency, or institution under the preceding sentence as follows: "Under current law, sales by Federal Prison Industries are considered intragovernmental transfers. The purpose of reporting sales by Federal Prison Indus-

tries is to provide a complete overview of acquisitions by the Federal Government during the reporting period.”.

[(d) Within 90 days after the date of the enactment of this subsection, Federal Prison Industries shall publish a catalog of all products and services which it offers for sale. This catalog shall be updated periodically to the extent necessary to ensure that the information in the catalog is complete and accurate.]

**§4124. Governmentwide procurement policy relating to purchases from Federal Prison Industries**

(a) *IN GENERAL.*—Purchases from Federal Prison Industries, Incorporated, a wholly owned Government corporation, as referred to in section 9101(3)(E) of title 31, may be made by a Federal department or agency only in accordance with this section.

(b) *SOLICITATION AND EVALUATION OF OFFERS AND CONTRACT AWARDS.*—(1)(A) If a procurement activity of a Federal department or agency has a requirement for a specific product or service that is authorized to be offered for sale by Federal Prison Industries, in accordance with section 4122 of this title, and is listed in the catalog referred to in subsection (g), the procurement activity shall solicit an offer from Federal Prison Industries, if the purchase is expected to be in excess of the micro-purchase threshold (as defined by section 32(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(f))).

(B) The requirements of subparagraph (A) shall also apply to a procurement that a Federal department or agency intends to meet by placing an order against a contract maintained by the General Services Administration under the Multiple Award Schedule Contracts Program.

(C) Federal Prison Industries, upon its request, shall be listed on any Schedule, referred to in subparagraph (B), as offering products or services which Federal Prison Industries believes to be comparable to those products and services being offered by commercial contractors through the Multiple Award Schedule Contracts Program.

(2) A contract award for such product or service shall be made using competitive procedures in accordance with the applicable evaluation factors, unless a determination is made by the Attorney General pursuant to paragraph (3) or an award using other than competitive procedures is authorized pursuant to paragraph (7).

(3) The procurement activity shall negotiate with Federal Prison Industries on a noncompetitive basis for the award of a contract if the Attorney General determines that—

(A) Federal Prison Industries cannot reasonably expect fair consideration to receive the contract award on a competitive basis; and

(B) the contract award is necessary to maintain work opportunities otherwise unavailable at the penal or correctional facility at which the contract is to be performed to prevent circumstances that could reasonably be expected to significantly endanger the safe and effective administration of such facility.

(4) Except in the case of an award to be made pursuant to paragraph (3), a contract award shall be made with Federal Prison Industries only if the contracting officer for the procurement activity determines that—

(A) the specific product or service to be furnished will meet the requirements of the procurement activity (including any applicable prequalification requirements and all specified commercial or governmental standards pertaining to quality, testing, safety, serviceability, and warranties);

(B) timely performance of the contract can be reasonably expected; and

(C) the contract price does not exceed a current market price.

(5) A determination by the Attorney General pursuant to paragraph (3) shall be—

(A) supported by specific findings by the warden of the penal or correctional institution at which a Federal Prison Industries workshop is scheduled to perform the contract;

(B) supported by specific findings by Federal Prison Industries regarding why it does not expect to win the contract on a competitive basis; and

(C) made and reported in the same manner as a determination made pursuant to section 303(c)(7) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(7)).

(6) If the Attorney General has not made the determination described in paragraph (3) within 30 days after Federal Prison Industries has been informed of a contracting opportunity by a procurement activity, the procurement activity may proceed to conduct a procurement for the product or service in accordance with the procedures generally applicable to such procurements by the procurement activity.

(7) A contract award may be made to Federal Prison Industries using other than competitive procedures if such product or service is only available from Federal Prison Industries and the contract may be awarded under the authority of section 2304(c)(1) of title 10 or section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)(1)), as may be applicable, and pursuant to the justification and approval requirements relating to such noncompetitive procurements specified by law and the Governmentwide Federal Acquisition Regulation.

(8) A contract award may be made to Federal Prison Industries using other than competitive procedures by the Federal Bureau of Prisons.

(9) A solicitation for a contract shall first be made to Federal Prison Industries using other than competitive procedures if the product or service to be acquired would otherwise be furnished by a contractor performing the work outside of the United States.

(c) OFFERS FROM FEDERAL PRISON INDUSTRIES.—(1) A timely offer received from Federal Prison Industries to furnish a product or service to a Federal department or agency shall be considered for award without limitation as to the dollar value of the proposed purchase, unless the contract opportunity has been reserved for competition exclusively among small business concerns pursuant to section 15(a) of the Small Business Act (15 U.S.C. 644(a)) and its implementing regulations.

(2) Any offer made by Federal Prison Industries to furnish a product or service may exclude from the offer the price of the following:

(A) The costs related to security of the facilities at which the contract will be performed.

(B) *The costs of educating and training the prison work force performing the contract.*

(C) *Excess capital costs of machinery and excess inventories used within a prison environment that are the result of the unique environment of prison life.*

(D) *Other costs of performing the contract resulting from the unique environment of prison facilities.*

(d) *PERFORMANCE BY FEDERAL PRISON INDUSTRIES.—Federal Prison Industries shall perform its contractual obligations under a contract awarded by a Federal department or agency to the same extent as any other contractor.*

(e) *FINALITY OF CONTRACTING OFFICER'S DECISION.—(1) A decision by a contracting officer regarding the award of a contract to Federal Prison Industries or relating to the performance of such contract shall be final, unless reversed on appeal pursuant to paragraph (2) or (3).*

(2)(A) *The Chief Operating Officer of Federal Prison Industries may protest a decision by a contracting officer not to award a contract to Federal Prison Industries pursuant to subsection (b)(4), in accordance with section 33.103, (Protests to the agency) of the Federal Acquisition Regulation (48 C.F.R. part 33.103).*

(B) *In the event of an adverse decision of a protest filed pursuant to subparagraph (A), the Assistant Attorney General for Administration may request a reconsideration of such adverse decision by the head of the Federal agency or department, which shall be considered de novo and the decision issued by such agency head on a non-delegable basis. Such decision upon reconsideration by the agency head shall be final.*

(3) *A dispute between Federal Prison Industries and a procurement activity regarding performance of a contract shall be subject to—*

(A) *alternative means of dispute resolution pursuant to subchapter IV of chapter 5 of title 5; or*

(B) *final resolution by the board of contract appeals having jurisdiction over the procurement activity's contract performance disputes pursuant to the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).*

(f) *REPORTING OF PURCHASES.—Each Federal department or agency shall report purchases from Federal Prison Industries to the Federal Procurement Data System (as referred to in section 6(d)(4) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(4))) in the same manner as it reports to such System any acquisition in an amount in excess of the simplified acquisition threshold (as defined by section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).*

(g) *CATALOG OF PRODUCTS.—Federal Prison Industries shall publish and maintain a catalog of all specific products and services that it is authorized to offer for sale. Such catalog shall be periodically revised as products and services are added or deleted by its board of directors (in accordance with section 4122(b) of this title).*

(h) *COMPLIANCE WITH STANDARDS.—Federal Prison Industries shall be subject to Federal occupational, health, and safety standards with respect to the operation of its industrial operations.*

**§4124a. Additional inmate work opportunities through public service activities**

(a) *IN GENERAL.*—Inmates with work assignments within Federal Prison Industries may perform work for an eligible entity pursuant to an agreement between such entity and the Inmate Work Training Administrator in accordance with the requirements of this section.

(b) *DEFINITION OF ELIGIBLE ENTITIES.*—For the purposes of this section, the term “eligible entity” means an entity—

(1) that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code and that has been such an organization for a period of not less than 36 months prior to inclusion in an agreement under this section;

(2) that is a religious organization described in section 501(d) of such Code and exempt from taxation under section 501(a) of such Code; or

(3) that is a unit of local government, a school district, or another special purpose district.

(c) *INMATE WORK TRAINING ADMINISTRATOR.*—There is hereby established the position of Inmate Work Training Administrator, who shall be responsible for fostering the creation of alternative inmate work opportunities authorized by this section. The Administrator shall be designated by the Chief Executive Officer of Federal Prison Industries, with the approval of the Board of Directors, and be under the supervision of the Chief Operating Officer, but may directly report to the Board.

(d) *PROPOSED AGREEMENTS.*—An eligible entity seeking to enter into an agreement pursuant to subsection (a) shall submit a detailed proposal to the Inmate Work Training Administrator. Each such agreement shall specify—

(1) types of work to be performed;

(2) the proposed duration of the agreement, specified in terms of a base year and number of option years;

(3) the number of inmate workers expected to be employed in the specified types of work during the various phases of the agreement;

(4) the wage rates proposed to be paid to various classes of inmate workers; and

(5) the facilities, services and personnel (other than correctional personnel dedicated to the security of the inmate workers) to be furnished by Federal Prison Industries or the Bureau of Prisons and the rates of reimbursement, if any, for such facilities, services, and personnel.

(e) *REPRESENTATIONS.*—

(1) *ELEEMOSYNARY WORK ACTIVITIES.*—Each proposed agreement shall be accompanied by a written certification by the chief executive officer of the eligible entity that—

(A) the work to be performed by the inmate workers will be limited to the eleemosynary work of such entity in the case of an entity described in paragraph (1) or (2) of subsection (b);

(B) the work would not be performed in the United States but for the availability of the inmate workers; and

(C) the work performed by the inmate workers will not result, either directly or indirectly, in the production of a new

product or the furnishing of a service that is to be offered for other than resale or donation by the eligible entity or any affiliate of the such entity.

(2) *PROTECTIONS FOR NON-INMATE WORKERS.*—Each proposed agreement shall also be accompanied by a written certification by the chief executive officer of the eligible entity that—

(A) no non-inmate employee (including any person performing work activities for such governmental entity pursuant to section 607 of subchapter IV of the Social Security Act (42 U.S.C. 607)) of the eligible entity (or any affiliate of the entity) working in the United States will have his or her job abolished or work hours reduced as a result of the entity being authorized to utilize inmate workers; and

(B) the work to be performed by the inmate workers will not supplant work currently being performed in the United States by a contractor of the eligible entity.

(f) *APPROVAL BY BOARD OF DIRECTORS.*—

(1) *IN GENERAL.*—Each such proposed agreement shall be presented to the Board of Directors, be subject to the same opportunities for public comment, and be publicly considered and acted upon by the Board in a manner comparable to that required by paragraphs (7) and (8) of section 4122(b).

(2) *MATTERS TO BE CONSIDERED.*—In determining whether to approve a proposed agreement, the Board shall—

(A) give priority to an agreement that provides inmate work opportunities that will provide participating inmates with the best prospects of obtaining employment paying a livable wage upon release;

(B) give priority to an agreement that provides for maximum reimbursement for inmate wages and for the costs of supplies and equipment needed to perform the types of work to be performed;

(C) not approve an agreement that will result in the displacement of non-inmate workers contrary to the representations required by subsection (e)(2) as determined by the Board or by the Secretary of Labor (pursuant to subsection (i)); and

(D) not approve an agreement that will result, either directly or indirectly, in the production of a new product or the furnishing of a service for other than resale by an eligible entity described in paragraph (1) or (2) of subsection (b) or donation.

(g) *WAGE RATES AND DEDUCTIONS FROM INMATE WAGES.*—

(1) *IN GENERAL.*—Inmate workers shall be paid wages for work under the agreement at a basic hourly rate to be negotiated between the eligible entity and Federal Prison Industries and specified in the agreement. The wage rates set by the Director of the Federal Bureau of Prisons to be paid inmates for various institutional work assignments are specifically authorized.

(2) *PAYMENT TO INMATE WORKER AND AUTHORIZED DEDUCTIONS.*—Wages shall be paid and deductions taken pursuant to section 4122(b)(12)(D).

(3) *VOLUNTARY PARTICIPATION BY INMATE.*—Each inmate worker to be utilized by an eligible entity shall indicate in writing that such person—

(A) is participating voluntarily; and

(B) understands and agrees to the wages to be paid and deductions to be taken from such wages.

(h) **ASSIGNMENT TO WORK OPPORTUNITIES.**—Assignment of inmates to work under an approved agreement with an eligible entity shall be subject to the Bureau of Prisons Program Statement Number 1040.10 (Non-Discrimination Toward Inmates), as contained in section 551.90 of title 28 of the Code of Federal Regulations (or any successor document).

(i) **ENFORCEMENT OF PROTECTIONS FOR NON-INMATE WORKERS.**—

(1) **PRIOR TO BOARD CONSIDERATION.**—Upon request of any interested person, the Secretary of Labor may promptly verify a certification made pursuant subsection (e)(2) with respect to the displacement of non-inmate workers so as to make the results of such inquiry available to the Board of Directors prior to the Board's consideration of the proposed agreement. The Secretary and the person requesting the inquiry may make recommendations to the Board regarding modifications to the proposed agreement.

(2) **DURING PERFORMANCE.**—

(A) **IN GENERAL.**—Whenever the Secretary deems appropriate, upon request or otherwise, the Secretary may verify whether the actual performance of the agreement is resulting in the displacement of non-inmate workers or the use of inmate workers in a work activity not authorized under the approved agreement.

(B) **SANCTIONS.**—Whenever the Secretary determines that performance of the agreement has resulted in the displacement of non-inmate workers or employment of an inmate worker in an unauthorized work activity, the Secretary may—

(i) direct the Inmate Work Training Administrator to terminate the agreement for default, subject to the processes and appeals available to a Federal contractor whose procurement contract has been terminated for default; and

(ii) initiate proceedings to impose upon the person furnishing the certification regarding non-displacement of non-inmate workers required by subsection (d)(2)(B) any administrative, civil, and criminal sanctions as may be available.

**§4124b. Re-entry employment preparation through work-based training and apprenticeship.**

(a) **PARTICIPATION AUTHORIZED.**—A private for-profit business entity shall be an eligible entity for participation in the program authorized by section 4124a of this title, if such participation conforms with the requirements and limitations of this section.

(b) **REQUIREMENTS RELATING TO PRODUCTS AND SERVICES.**—A private for-profit business entity is eligible for such participation if such business entity proposes to train participating inmates, pursuant to subsection (c), by producing a product or performing a service, if such product or service is of a type for which there is no production or performance within the United States by noninmate workers.

(c) *REQUIREMENTS RELATING TO TRAINING.*—

(1) *IN GENERAL.*—For purposes of this section, the training of participating inmates shall be work-based training that provides to a participating inmate apprenticeship training or a functionally equivalent structured program that combines hands-on work experience with conceptual understanding of the work being performed. Other inmates with regular work assignments within Federal Prison Industries may be assigned to support the program.

(2) *DOCUMENTATION OF PROGRAM PARTICIPATION.*—

(A) Each inmate who successfully completes participation in training undertaken pursuant to this section shall be provided a certificate or other written document memorializing such successful completion, providing a marketable summary of the skills learned and an overall assessment of performance.

(B) Copies of such documents shall be furnished to prospective employers upon the request of the participant for a period of not less than 24 months from the date of such participant's release from incarceration.

(3) *DOCUMENTS REQUIRED FOR EMPLOYMENT.*—The Federal Bureau of Prisons, in cooperation with a business entity providing an inmate work-based training at the time of his or her scheduled release, shall make every reasonable effort to help the inmate timely obtain such documentation (including a State government-issued photo identification card) as a person may be required to provide to a prospective employer, after such person completes an Employment Eligibility Verification (ICE Form I-9).

(d) *WAGE RATES.*—

(1) *IN GENERAL.*—Business entities participating in the program authorized by subsection (a) shall propose wages for inmates participating in the program at rates not less than the inmate training wage promulgated pursuant to section 17(c) of the Federal Prison Industries Competition in Contracting Act of 2006.

(2) *INMATE TRAINING WAGE.*—Not more than 30 days after the date of enactment of this section, the Board of Directors of Federal Prison Industries shall request the Secretary of Labor to promulgate an inmate training wage pursuant to section 14(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(a)).

(e) *SUPPORT FOR OTHER RELEASE PREPARATION PROGRAMS.*—In addition to the matters listed in section 4124a(d) of this title, a proposal for an agreement referred to in such section submitted by an eligible business entity shall specify an amount of any supplemental funding, specified as a per-capita amount for each inmate participating pursuant to the agreement, that the business entity will provide for the purpose of supporting remedial, vocational, and other release preparation programs for other nonparticipating inmates.

(f) *ADDITIONAL STANDARDS APPLICABLE.*—In considering a proposed agreement pursuant to section 4124a(f)(1) of this title, the Board of Directors shall—

(1) give preference to an agreement that proposes—

(A) work-based training opportunities that provide the participating inmate the best prospects for obtaining employment paying a livable wage upon release;

(B) the highest per-capita amount pursuant to subsection (e) relating to providing financial support for release preparation for other inmates; and

(C) the highest inmate wage rates;

(2) not approve any agreement with respect to furnishing services of the type described in section 4122(b)(6)(D)(iii) of this title;

(3) not approve any agreement with respect to furnishing construction services described in section 4122(b)(6)(D)(iv) of this title, unless to be performed within a Federal correctional institution;

(4) not approve an agreement that does not meet the standards of subsection (b); and

(5) request a determination from the International Trade Commission (and such other executive branch entities as may be appropriate), regarding whether a product or service is of the type being produced or performed in the United States by non-inmate workers, whenever the Board determines that such an additional assessment is warranted, including upon a request from an interested party presenting information that the Board deems to warrant such additional assessment prior to the Board's consideration of the proposed agreement.

(g) LIMITATIONS ON THE USE OF THE AUTHORITY.—

(1) NO SALES BY FEDERAL PRISON INDUSTRIES.—Federal Prison Industries is prohibited from directly offering for commercial sale products produced or services furnished by Federal inmates, including through any form of electronic commerce.

(2) DURATION.—

(A) No proposed agreement pursuant to this subsection may be approved by the Board of Directors after September 30, 2016.

(B) Performance of all such agreements shall be concluded prior to October 1, 2021.

\* \* \* \* \*

#### **§ 4127. Prison Industries report to Congress**

【The board of directors of Federal Prison Industries shall submit an annual report to the Congress on the conduct of the business of the corporation during each fiscal year, and on the condition of its funds during such fiscal year. Such report shall include a statement of the amount of obligations issued under section 4129(a)(1) during such fiscal year, and an estimate of the amount of obligations that will be so issued in the following fiscal year.】

#### **§ 4127. Federal Prison Industries report to Congress**

(a) IN GENERAL.—Pursuant to chapter 91 of title 31, the board of directors of Federal Prison Industries shall submit an annual report to Congress on the conduct of the business of the corporation during each fiscal year and the condition of its funds during the fiscal year.

(b) *CONTENTS OF REPORT.*—In addition to the matters required by section 9106 of title 31, and such other matters as the board considers appropriate, a report under subsection (a) shall include—

(1) a statement of the amount of obligations issued under section 4129(a)(1) of this title during the fiscal year;

(2) an estimate of the amount of obligations that will be issued in the following fiscal year;

(3) an analysis of—

(A) the corporation's total sales for each specific product and type of service sold to the Federal agencies and the commercial market;

(B) the total purchases by each Federal agency of each specific product and type of service;

(C) the corporation's share of such total Federal Government purchases by specific product and type of service; and

(D) the number and disposition of disputes submitted to the heads of the Federal departments and agencies pursuant to section 4124(e) of this title;

(4) an allocation of the profits of the corporation, both gross and net, to—

(A) educational, training, release-preparation opportunities for inmates;

(B) opening new factories; and

(C) improving the productivity and competitiveness of existing factories;

(5) an analysis of the inmate workforce that includes—

(A) the number of inmates employed;

(B) the number of inmates utilized to produce products or furnish services sold in the commercial market;

(C) the number and percentage of employed inmates by the term of their incarceration; and

(D) the various hourly wages paid to inmates employed with respect to the production of the various specific products and types of services authorized for production and sale to Federal agencies and in the commercial market; and

(6) data concerning employment obtained by former inmates upon release to determine whether the employment provided by Federal Prison Industries during incarceration provided such inmates with knowledge and skill in a trade or occupation that enabled such former inmate to earn a livelihood upon release.

(c) *PUBLIC AVAILABILITY.*—Copies of an annual report under subsection (a) shall be made available to the public at a price not exceeding the cost of printing the report.

\* \* \* \* \*

### **§4130. Construction of provisions**

Nothing in this chapter shall be construed—

(1) to establish an entitlement of any inmate to—

(A) employment in a Federal Prison Industries facility; or

(B) any particular wage, compensation, or benefit on demand, except as otherwise specifically provided by law or regulation;

(2) to establish that inmates are employees for the purposes of any law or program; or

(3) to establish any cause of action by or on behalf of any inmate against the United States or any officer, employee, or contractor thereof.

**§4131. Definitions**

As used in this chapter—

(1) the term “assembly” means the process of uniting or combining articles or components (including ancillary finished components or assemblies) so as to produce a significant change in form or utility, without necessarily changing or altering the component parts;

(2) the term “current market price” means, with respect to a specific product, the fair market price of the product within the meaning of section 15(a) of the Small Business Act (15 U.S.C. 644(a)), at the time that the contract is to be awarded, verified through appropriate price analysis or cost analysis, including any costs relating to transportation or the furnishing of any ancillary services;

(3) the term “import-sensitive product” means a product which, according to Department of Commerce data, has experienced competition from imports at an import to domestic production ratio of 25 percent or greater;

(4) the term “labor-intensive manufacture” means a manufacturing activity in which the value of inmate labor constitutes at least 10 percent of the estimate unit cost to produce the item by Federal Prison Industries;

(5) the term “manufacture” means the process of fabricating from raw or prepared materials, so as to impart to those materials new forms, qualities, properties, and combinations;

(6) the term “reasonable share of the market” means a share of the total purchases by the Federal departments and agencies, as reported to the Federal Procurement Data System for—

(A) any specific product during the 3 preceding fiscal years, that does not exceed 20 percent of the Federal market for the specific product; and

(B) any specific service during the 3 preceding fiscal years, that does not exceed 5 percent of the Federal market for the specific service; and

(7) the term “services” has the meaning given the term “service contract” by section 37.101 of the Federal Acquisition Regulation (48 C.F.R. 36.102), as in effect on July 1, 2004.

\* \* \* \* \*

**SECTION 318 OF THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949**

**SEC. 318. PRODUCTS OF FEDERAL PRISON INDUSTRIES: PROCEDURAL REQUIREMENTS.**

(a) MARKET RESEARCH.—Before purchasing a product listed in the latest edition of the Federal Prison Industries catalog under section 4124(g) of title 18, United States Code, the head of an executive agency shall conduct market research to determine whether the Federal Prison Industries product is comparable to products available

from the private sector that best meet the executive agency's needs in terms of price, quality, and time of delivery.

(b) *COMPETITION REQUIREMENT.*—If the head of the executive agency determines that a Federal Prison Industries product is not comparable in price, quality, or time of delivery to products available from the private sector that best meet the executive agency's needs in terms of price, quality, and time of delivery, the agency head shall use competitive procedures for the procurement of the product or shall make an individual purchase under a multiple award contract. In conducting such a competition or making such a purchase, the agency head shall consider a timely offer from Federal Prison Industries.

(c) *IMPLEMENTATION BY HEAD OF EXECUTIVE AGENCY.*—The head of an executive agency shall ensure that—

(1) the executive agency does not purchase a Federal Prison Industries product or service unless a contracting officer of the agency determines that the product or service is comparable to products or services available from the private sector that best meet the agency's needs in terms of price, quality, and time of delivery; and

(2) Federal Prison Industries performs its contractual obligations to the same extent as any other contractor for the executive agency.

(d) *MARKET RESEARCH DETERMINATION NOT SUBJECT TO REVIEW.*—A determination by a contracting officer regarding whether a product or service offered by Federal Prison Industries is comparable to products or services available from the private sector that best meet an executive agency's needs in terms of price, quality, and time of delivery shall not be subject to review pursuant to section 4124(b) of title 18.

(e) *PERFORMANCE AS A SUBCONTRACTOR.*—(1) A contractor or potential contractor of an executive agency may not be required to use Federal Prison Industries as a subcontractor or supplier of products or provider of services for the performance of a contract of the executive agency by any means, including means such as—

(A) a contract solicitation provision requiring a contractor to offer to make use of products or services of Federal Prison Industries in the performance of the contract;

(B) a contract specification requiring the contractor to use specific products or services (or classes of products or services) offered by Federal Prison Industries in the performance of the contract; or

(C) any contract modification directing the use of products or services of Federal Prison Industries in the performance of the contract.

(2) In this subsection, the term “contractor”, with respect to a contract, includes a subcontractor at any tier under the contract.

(f) *PROTECTION OF CLASSIFIED AND SENSITIVE INFORMATION.*—The head of an executive agency may not enter into any contract with Federal Prison Industries under which an inmate worker would have access to—

(1) any data that is classified;

(2) any geographic data regarding the location of—

(A) surface and subsurface infrastructure providing communications or water or electrical power distribution;

(B) pipelines for the distribution of natural gas, bulk petroleum products, or other commodities; or

(C) other utilities; or

(3) any personal or financial information about any individual private citizen, including information relating to such person's real property however described, without the prior consent of the individual.

(g) DEFINITIONS.—In this section:

(1) The term “competitive procedures” has the meaning given such term in section 4(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(5)).

(2) The term “market research” means obtaining specific information about the price, quality, and time of delivery of products available in the private sector through a variety of means, which may include—

(A) contacting knowledgeable individuals in government and industry;

(B) interactive communication among industry, acquisition personnel, and customers; and

(C) interchange meetings or pre-solicitation conferences with potential offerors.

## DISSENTING VIEWS

These views dissent from the Committee Report on H.R. 2965.

### INTRODUCTION

The Federal Prison Industries program is not only the Department of Justice's most important correctional management tool, it is also one of the Department's most effective means of rehabilitating inmates, thereby reducing recidivism. Federal Prison Industries, Inc., or FPI was signed into law by President Roosevelt in 1934, in the midst of the Great Depression, as a way to protect the public by teaching prisoners real work habits and skills so that when they were released they would be better able to find and hold jobs to support themselves and their families, and be less likely to commit additional crimes. It is clear that the FPI program works to do just that. Follow-up studies covering as much as 16 years of data have shown that inmates who work in FPI are less likely to return to a life of crime after they are released. Research shows that inmates in FPI are 24% less likely to recidivate than similar inmates who didn't participate in FPI. Also, inmates in FPI are 14% more likely to find and maintain a job than those without FPI experience. Working in FPI has an even greater positive impact on minority offenders who are at the greatest statistical risk of recidivism. While the program certainly benefits offenders and their families, that is not the primary benefit of FPI from a public policy perspective. The real benefit to all of us is that, as a result of this program, we are less likely to be victims of crime.

### WHAT THE BILL DOES

H.R. 2965 would immediately eliminate the current "mandatory source" procurement authority for federal agency purchases from (FPI). While the bill provides for an agency option to purchase goods from FPI on a non-competitive basis which is phased out over a 5-year period, there should be no mistake—the mandatory source rule in effect today would be eliminated immediately upon the effective date of this bill becoming law. The 1934 law required purchases by federal agencies to ensure work opportunities for inmates. The law recognizes that prison work operations are necessarily less efficient, less productive and more costly to run when compared to private work conditions. This is due in large measure to the high level of security and control that must be maintained in a prison factory, no or very low beginning work skills among the inmate workforce, and the objective of labor intensive activities to maximize the number of inmates employed. It is estimated that it takes four inmates to equate to the production of one private worker.

Ironically, most of the adverse impact of this bill will fall on private sector companies and their workers. FPI would not exist, and certainly could not offer quality products and services without the direct support of private sector companies that provide the raw materials and services FPI needs to produce its products. Each of these companies responded to solicitations issued by FPI (as a Federal agency, FPI follows all the Federal procurement regulations) and were awarded the contracts through competitive procedures. In order to fulfill their contractual obligations, these companies have hired law-abiding citizens as staff, added equipment, and some have even opened entire new plants. Many of these companies have FPI contracts which extend 5–10 years. FPI estimates that approximately 5,000 U.S. jobs, of which many are unionized, are sustained by the program.

Last year, FPI spent 74% of its sales revenue on purchases of raw materials, equipment, supplies, and services from private sector companies, 66% of which were purchased from small businesses including women, minorities and those who are disadvantaged. These expenditures exceeded \$500 million last year. The private sector companies selling their goods to FPI have played by the rules, competing fair and square for the contracts. These companies and their employees do not deserve to be on the receiving end of an unjustified animus toward inmates or FPI.

The bill amends the current requirement in the law for agencies to purchase goods from FPI and establishes a competitive bid process for agency purchases of goods and services, unless the Attorney General, Bureau of Prisons BOP and FPI officials certify that they cannot safely run a prison without the particular contract award. It is unlikely that any of these officials will publicly admit such a level of incompetence in order to obtain an inmate work contract.

The bill makes a halfhearted effort to replace mandatory source and service contract jobs by providing a transition preference program for agencies using FPI, by authorizing new options such as providing products or services to charitable and non-profit organizations contingent on appropriations, by allowing FPI to provide services and products to federal agencies on a non-competitive basis if they would otherwise be provided from offshore, and by authorizing a work training program for FPI to produce goods and services for private companies if the goods and services are not produced anywhere in the U.S. However, there is no basis for concluding that these authorities would generate any significant inmate job opportunities, and certainly not replace the loss of current inmate jobs now performed by FPI under mandatory source and legally sanctioned commercial services.

In addition to restrictions on FPI's ability to produce products for federal agencies, the bill severely restricts the ability of FPI to obtain commercial service contracts. An alternative currently employed by FPI to decrease its federal market share for products, thus reducing its reliance on mandatory source, is performing services for companies which are currently being performed in foreign countries. These contracts are competitively obtained by FPI. Because of the restrictions in the bill, current FPI service contracts employing over 2,000 inmates, which involve no competition with

domestic workers, will be eliminated. This work will then go back offshore.

The bill, which is purportedly designed to reform federal prison industries, also prohibits state prison industries from performing commercial service contracts. These restrictions will also have significant negative impact on numerous state correctional systems, hurt private sector businesses as well as prisoners and bring about increased numbers of crime victims as a result of inmates that do not have the rehabilitative and job skills training benefits of prison industries. Remy International (formerly, Delco Remy) advised that for its service contracts with Virginia prison enterprises, for example, the restriction on state services in the bill would mean the following:

If section 7 passes, the bottom line is that we will ABSOLUTELY close our correctional facility factory in Virginia and every single one of those 230 inmate jobs and 25 civilian jobs will go to Mexico and China—no hyperbole here. Moreover, we recently sent 55 jobs to Mexico which we are considering returning to a correctional facility in West Virginia. Until we have a greater sense of security that Section 7 will be deleted, those jobs will remain in Mexico.

The same thing will occur regarding similar Remy International operations in other states, as well. The combined impact of the federal and state prohibitions on service contracts with private businesses will have the effect of eliminating a substantial number of federal and state prison industries service contracts where hundreds of civilian workers and thousands of inmate workers will lose their jobs.

Further, the bill will have an unintended discriminatory effect upon small, minority and women-owned businesses. As noted above, roughly two thirds of FPI purchases are made from small, women and minority owned and disadvantaged businesses. This is three times higher than the Small Business Administration goal, and one of the highest rates among all Federal agencies. It is well established that small businesses create more jobs per dollar of revenue than large businesses. Accordingly, to the extent that FPI's sales decline, the hardest hit will be the socio-economically disadvantaged businesses which are deliberately targeted to provide them federal procurement opportunities.

Of course, the adverse effects of reducing the FPI program will also disproportionately affect minority inmates since racial and ethnic minorities are disproportionately represented among the inmate population. Their representation in FPI jobs, however, mirrors this overrepresentation in the prison population. Important research on the value to inmates of working in prison industries jobs demonstrates that these minority inmates benefit at a higher rate than majority group members regarding their likelihood of remaining crime-free and being successfully employed upon release. Thus, job reductions in FPI of the magnitude certain to occur under the bill will fall hardest on racial and ethnic minorities.

We have already seen the effects of what eliminating mandatory source will do the FPI program. Since 2001, as a result of the "Levin Amendment", other similar legislative restrictions added to

appropriations bills, and FPI Board restrictions, FPI's inmate employment level has fallen from 25% of the eligible inmate workforce to approximately 18% today. In the same time frame, 13 FPI factories have closed and the overall number of inmates employed has fallen from approximately 22,000 to approximately 20,000, while the overall prison population has increased by more than 23,000 inmates. Further, as a result of these restrictions, only about half of FPI's work results from use of mandatory source, with the vast majority of it resulting from activities supporting the Nation's war effort. When the war effort declines as anticipated, inmate employment levels are expected to also decline, precipitously, from current levels. Moreover, as mentioned above, over 2,000 inmates employed in FPI performing services for private sector entities will all lose their jobs as a result of this bill.

Some supporters of the bill suggest that vocational education is a good substitute for FPI work experience. The bill provides authority for increased vocational training programs. A vocational education program typically runs for two years or less and is generally thought better to be provided toward the end of the sentence. The average sentence for prisoners in the federal system is eight years. Whenever the vocational training is provided, the question becomes what to do with the other six years of the sentence prior to or after completion of what is considered a beneficial period of vocational education. Furthermore, unlike FPI which is completely self-sustaining, such vocational programs would require significant appropriated funding. Of course, the prospects of getting significant appropriations authorized by this bill approved for vocational education for inmates are virtually non-existent.

The bill also provides an authorization for FPI to make products and donate them to non-profit organizations as a way to maintain work opportunities for inmates. Producing products to give to charitable organizations would generate very limited work for inmates. Because the products would be donated, by definition the work would not be self-sustaining, transferring to the tax payer costs for a program that is currently wholly self-supporting. It is completely improbable that any funding will be made available for these work alternatives, and even with funding, the programs would not make up for many of the jobs that will be lost due to elimination of the mandatory source program and commercial service contracts.

Over the past decade, many offers have been made by defenders of the FPI program for viable alternatives to the mandatory source program opponents are dead-set on eliminating. Rep. Frank Wolf, Rep. Mark Green and Rep. Bobby Scott have all made proposals for viable inmate work alternatives to mandatory source. All such efforts have been rejected by members representing the business/labor coalition that opposes FPI. And defenders of FPI have been open to any and all alternatives for jobs suggested by opponents, with the simple proviso that mandatory source be phased down over an agreed period of time as those alternatives are brought on line. Recently, the Department of Justice (DOJ) entered the tray in an effort to work with the business/labor coalition in coming up with viable inmate work alternatives to mandatory source, but, after eight months of attempted negotiations, DOJ was also unsuccessful. In the final analysis, the coalition rejected its own proposal

in order to, once again, arrive at the inevitable conclusion that it could prevail without compromises on anything that would allow FPI to attain and maintain its traditional goal of providing job skills training to 25% of the inmate population. As a result, the Department of Justice has gone on record as being unable to support H.R. 2965.

#### FPI OPERATIONS

The total revenues of FPI represent a very small portion (about  $\frac{1}{4}$  of 1%) of total federal agency procurement dollars and only 2.5% of the overall federal market in the approximately 80 products and services it provides. The furniture and apparel industries are two of the industries in which FPI produces the highest volume of work. When asked, representatives of these industries conceded that FPI sales represent an “insignificant” and “negligible” portion of their industries, respectively. If such industries are having problems, it is clearly not due to the impact of FPI. In textiles, for example, it is said that over 600,000 jobs were lost during the past 10 years. There are roughly 6,600 inmates working in textiles in FPI. Clearly, the blame for the loss of 600,000 jobs cannot be a few thousand prisoners. The same is true of revenue reductions and job loss due to economic downturns in the office furniture business. FPI’s office furniture sales total \$140 million. This represents just 1% of the \$13.4 billion domestic office furniture market.

In the period between 1990 and 2004, the federal inmate population increased from approximately 58,500 to almost 180,000, more than 207%. By 2011, the population is projected to reach approximately 225,000. All able-bodied inmates in the federal system are required, by law to work. Yet, few offenders enter prison with marketable work skills. The vast majority do not have even credible work habits such as showing up for work on time each day, and working cooperatively and productively with others. Such habits are required to maintain an FPI job just as they are required to obtain and maintain a job in the free world. While vocational education is important and ought to be available to all inmates, no amount of educational course work can substitute for the real world workplace experience of a meaningful job.

With the elimination of parole, good conduct credits, Pell grants, and other positive incentive programs, the federal prison system has little to offer as ongoing incentives for self development. The one shining exception is the FPI program. Non-FPI inmate jobs pay from \$.12 an hour to \$.44 cents an hour. The average non-FPI inmate job pays \$.23 an hour. FPI jobs pay from \$.23 to \$1.15 per hour with the average pay being \$.93 per hour. Only 18% of inmates currently have access to a FPI job. The remaining 80% work in non-FPI jobs. In addition to work training and benefits, FPI also serves as an effective institutional management tool by requiring good conduct to remain in the program and it serves as an excellent education development incentive. To hold down an FPI job, an inmate must have completed high school or be making steady progress toward obtaining a GED. This is true not only for those already in an FPI job, but also for those on the waiting list for a job, as well as those seeking to establish eligibility to be placed on the waiting list. Contributions to inmate development and prison

management are important, but the least important of FPI's contributions. Reductions in crime, restitution payments to crime victims and support payments to inmate dependants are far more compelling reasons for the program. Last year, inmate workers paid almost \$3 million toward these obligations.

It is readily conceded that there are problems with the FPI program which should be fixed. When a small business making a single product depends upon a government contract for its operations, FPI should not be able to take that business away. But this bill should be fixing the program—not gutting it by taking away all of its primary business sources all at once. While the bill suggests that the lack of competition is the problem, the bill seeks to stranglehold FPI as a competitor not only by strengthening the prohibition against activities in the commercial market, but in the government market, as well. We should fix FPI's problems, but we should do so in ways that assure the viability of this vital crime reducing program. With additional prisons scheduled to come on line over the next few years, we can ill afford to diminish the FPI program's beneficial effects. About 98% of prisoners serving time will eventually return to society and our oversight focus should be on their rehabilitation and productive return as a matter of public safety. We can do better than this bill, and we should.

STEVE CHABOT.  
ROBERT C. SCOTT.  
HENRY HYDE.  
ZOE LOFGREN.  
DANIEL E. LUNGREN.

STATEMENT OF REMY INTERNATIONAL, INC., JULY 12, 2006

We appreciate the opportunity to submit a written statement for the record regarding Remy International's correctional industries program as it pertains to Section 7 of House Bill 2965, Federal Prison Industries Competition in Contracting Act of 2005.

Remy International, Inc. (formerly "Delco Remy International") is one of the leading manufacturers and refurbishers of automotive components in the world. Integrating correctional industries along with a variety of lean industrial engineering initiatives has enabled Remy to survive in a highly competitive global marketplace—a marketplace that has forced a reduction in product prices to the point of causing insolvency for many of Remy's competitors during the past decade.

Remy respectfully submits that Section 7 of H.R. 2965 pertaining to the prohibition of service agreements should be deleted. If service agreements were prohibited, Remy—which currently has such an agreement in Virginia—would be forced to pay offenders the higher of minimum wage or the prevailing wage for the area in which such jobs are located. This is tantamount to compelling Remy to move these operations abroad. In today's global economy, there simply is no way in which Remy can competitively price its products without the use of low-cost labor. Many major

companies are in the process of moving a portion of their operations abroad; some have moved their entire operations to foreign countries.

#### CORRECTIONAL INDUSTRIES PRESERVES CIVILIAN JOBS

We live and work in a different world now, and it has forced us to look to countries with lower labor costs, as we are continually pressured by our customer base to reduce costs in the products that we produce and refurbish. Through the use of correctional services, Remy has been able to preserve 600 civilian jobs in Virginia. (A former Remy subsidiary, Williams Technologies preserved 500 civilian jobs in South Carolina by entering into a Services Agreement with the State of South Carolina) With a total of nearly 3,000 civilian employees in the United States, Remy continues to maintain a strong presence in this country; correctional industries is one of many initiatives exercised to maintain this presence and to ensure the company survives intense competition from abroad.

As presently composed, H.R. 2965 will result in the loss of 600 civilian jobs in Virginia. This is because the operations that employ these workers are dependent upon the refurbishment of automotive components produced in the correctional facilities that would be closed through the passage of this Bill. If these correctional facility operations were to be closed, this work would NOT be placed in the United States. Rather, it would be relocated to existing factories in Xiamen, China and San Luis Potosi, Mexico. We respectfully urge you to consider deleting Section 7 of H.R. 2965 to preserve not only the 230 offender jobs in Virginia but also the 600 civilian jobs that are supported by our correctional industries operations.

Remy is committed to employing American workers. Using service agreements with correctional institutions helps ensure that Remy can keep both civilian and inmate jobs here in the United States, and provides significant work experience to participating inmates that helps reduce recidivism once they are released from confinement.

#### REMY'S VIRGINIA CORRECTIONAL INDUSTRIES PROGRAM

*Remy's agreement with the Virginia Department of Corrections has provided 230 jobs for inmates in Virginia. The Commonwealth of Virginia receives \$1,732,224 annually in Remy payments.*

Since opening a factory in Leiber Correctional Facility in South Carolina, Remy has opened a refurbishment factory in a state correctional facility in Culpeper, Virginia. The Culpeper operation is a worthy substitute for our traditional production model of having low-variety, high-volume production capacity in countries with low-labor costs while maintaining high-variety, low-volume production in the United States. Again, these operations were initiated with the understanding that civilian workers would not be displaced by such operations. For the Culpeper operation,

Remy pays \$3.47 per offender hour to Virginia, and Virginia pays either 65 cents or \$1.25 (depending on length of service) per hour to the offender workers. (The difference between what we pay and the amount the offenders receive is used to help fund a program for victim restitution as well as help pay the cost of operating the correctional institution).

#### WHY A SUB-MINIMUM WAGE?

The services agreement with the Commonwealth of Virginia ensures that we can keep both civilian and offender jobs within the United States. Because of challenges unique to operating a factory in correctional facility (versus a civilian factory), Remy utilizes more offenders for jobs in the correctional facility operations than it would ordinarily require in its civilian factories and, therefore, to ensure financial viability of the program, the offenders are paid a sub-minimum wage. It is not uncommon to have “lockdowns” within the entire correctional facility, causing us to lose productivity for several days at a time. If there is a heavy fog, offenders are not released from their dormitories to work. Offenders are frequently transferred from our correctional facility to other correctional facilities with little or no notice, causing a disruption to our operations. Many of the offenders suffer medical problems that require special accommodation through frequent medical treatment. Moving products in and out of the correctional facility is a very time-consuming procedure with costly delays. Contractors charge us a premium to service our equipment and machinery because of delays to enter and exit the factory within the walls of the correctional institution. With the significant inefficiencies inherent in a correctional industries environment, it is most difficult for a company to develop a business case for operating a factory within a correctional facility. A sub-minimum wage, as afforded by service agreements, enables correctional industries to be competitive with foreign labor and, as such, Remy has repatriated work from China and Malaysia to the United States.

If service agreements were to be prohibited, we would be required to close our correctional facility operation in Virginia, and these jobs would be relocated to existing operations in San Luis Potosi, Mexico and/or Xiamen, China, resulting in the loss of 230 offender jobs in Virginia.

#### WHY REMY’S CORRECTIONAL INSTITUTIONAL PROGRAMS WORK

1. Service agreements with correctional facilities add jobs for American civilian citizens, and prevent the relocation of these jobs to other countries.

As described above, our correctional facility operations actually add jobs, rather than displace American workers. Our contract with the Commonwealth of Virginia states that civilian workers shall not be displaced by the activities we operate in the correctional facility. In addition, we

usually use U.S.-based vendors for most of the component parts required in correctional facility operations. Since beginning our correctional industries programs, we have added 65 civilian jobs in Virginia. (Our former transmission division in South Carolina added 30 civilian jobs following the opening of its correctional industry program.)

The location of these jobs in the United States helps ensure that related parts and support services stay rooted in our local and national economy. The competitive realities of today's automotive parts manufacturing and refurbishment world, both for ourselves and our competitors, is that most of this type of work is done in Mexico and Asia. When the product servicing process is located in Mexico or China, most of the required components are also procured from vendors in these countries. Therefore, servicing our products in U.S. correctional facilities is much better for the U.S. economy and the U.S. job market than servicing them in Mexico or China. If H.R. 2965 becomes law without deletion of Section 7, it will most certainly result in the loss of U.S. jobs.

2. Since any of Remy's competitors can enter into service agreements with correctional facilities, these agreements are well within the realm of fair competition.

U.S. companies, including our competitors, are flocking to develop operations in Mexico and Asia. Some of them also have operations in correctional facilities. Both small and large businesses can participate in correctional industries with service agreements and, in fact, most companies that have operations within correctional facilities are small businesses.

In Virginia, there are over 30,000 offenders incarcerated at anyone time and there are over 2,000,000 people incarcerated nationwide. Remy employs a total of 230 offenders in its state correctional operations, leaving hundreds of thousands of offenders seeking gainful work. Any of our competitors who are not currently using offender labor have the same opportunity to use it as we do. (Recently, one competitor ceased using correctional industries labor because they secured lower costs by relocating to Mexico.) Such global examples demonstrate that using offender employment programs are not only fair competition, but also require as strong a business case regarding wages as any other factory site decision.

3. Remy's program of employing offenders provides them with valuable work experience and reduces recidivism.

Since 94% of all those incarcerated will eventually be released into society, work experience assists our correctional institutions and society at large in preparing offenders for a stable transition into society. According to some studies, work experience can reduce recidivism by up to 60%, according to Pride Enterprises of Florida. Most offenders learn what it means to "get up each morning and go to a job" for the first time in their lives. This would not be possible if service agreements were to be prohibited.

It is important to note that all of the workers in our correctional facility operations are working because they desire to work. No one is required to work for us and any offender may resign at any time without providing notice to us. Offenders consider Remy jobs very desirable because they provide:

- real-life work experience (the first “real” job for many offenders);
- hand-tool skills amenable to various trade jobs;
- compensation that is significantly more than traditional correctional work programs such as floor sweeping, food preparation, and litter collection.

As a matter of policy, Remy offers civilian jobs to successful ex-offenders after they complete their sentences, and such offenders have come to work for Remy following their release from incarceration.

Remy provides a safe working environment for all of its offenders, as our correctional industry factories must adhere to the same high standards for safety and cleanliness as our civilian factories. Offenders receive the same mandatory safety training programs that are provided to our civilian employees. The environmental regulations in our correctional facility operations are just as strict as in our civilian operations. Moreover, because Remy’s staff within the correctional facility must work in an OSHA-compliant environment, the correctional facility factories adhere to OSHA rules and regulations.

We are very proud of our correctional industry programs and we strongly encourage those who are interested to tour these operations. Remy is a U.S.-owned company with a 110-year history, but the truth is that we have struggled to survive in the new global economy and have been forced to develop capacity abroad. Our correctional industries program has enabled us to slow down, hopefully on a long-term basis, the exodus of many jobs leaving U.S. soil for Mexico and Asia.

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